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<i>Emily B. Candell</i> REGULATIONS COMPILER

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division for Air Quality

4 (Amendment)

5 401 KAR 51:017. Prevention of significant deterioration of air quality.

6 RELATES TO: KRS 224.10-100, 40 C.F.R. 51 Subpart I, Appendix S, sec. IV, Part
7 51, Appendix W, 51.166, 52.21, Part 58, Appendix A, [~~Appendix B~~], 60, 61, 63, 81.318,
8 81 Subpart D, 42 U.S.C. 7401-7671q, [~~7401-7671q (Clean Air Act)~~], 4321-4370d, EO
9 2009-538 [~~4321-4370d (National Environmental Policy Act)~~]

10 STATUTORY AUTHORITY: KRS 224.10-100(5), 40 C.F.R. 51.166, 52.21, 42 U.S.C.
11 7401-7671q, EO 2009-538 [~~7401-7671q (Clean Air Act)~~]

12 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 authorizes
13 [~~requires~~] the cabinet [~~Environmental and Public Protection Cabinet~~] to promulgate
14 administrative regulations for the prevention, abatement and control of air pollution. EO
15 2009-538, effective June 12, 2009, establishes the Energy and Environment Cabinet.

16 This administrative regulation provides for the prevention of significant deterioration of
17 ambient air quality. The provisions of this administrative regulation are not different nor
18 more stringent than the federal regulation, 40 C.F.R. 51.166.

19 Section 1. [~~4--~~] Applicability. (1) This administrative regulation shall apply to the
20 construction of a new major stationary source or a [~~any~~] project at an existing major
21 stationary source that commences construction after September 22, 1982, and locates

1 in an area designated attainment or unclassifiable under 42 U.S.C. 7407(d)(1)(A)(ii) and
2 (iii). (2) Except as otherwise provided in this administrative regulation, the provisions of
3 Sections 8 to 16 of this administrative regulation shall apply to the construction of a new
4 major stationary source or a major modification of an existing major stationary source.

5 (3) The owner or operator of a new major stationary source or major modification,
6 which is subject to the requirements of Sections 8 to 16 of this administrative regulation,
7 shall not begin actual construction without a proposed permit or proposed permit
8 revision issued under 401 KAR 52:020 stating that the major stationary source or major
9 modification shall meet those requirements.

10 (4) Applicability tests for projects. Except as provided in subsection (5) or (6) of this
11 section, a project shall be a major modification for a regulated NSR pollutant only if the
12 project causes a significant emissions increase and a significant net emissions increase
13 as provided in paragraphs (a) and (b) of this subsection.

14 (a) Prior to beginning actual construction, the owner or operator shall first determine
15 if a significant emissions increase will occur for the applicable type of unit being
16 constructed according to subparagraphs 1 to 4 of this paragraph.

17 1. Actual-to-projected actual applicability test for projects that only involve existing
18 emissions units. A significant emissions increase of a regulated NSR pollutant shall be
19 projected to occur if the sum of the difference between the projected actual emissions
20 and the baseline actual emissions for each existing emissions unit equals or exceeds
21 the significant amount for that pollutant.

22 2. Actual-to-potential test for projects that involve only construction of new emissions
23 units. A significant emissions increase of a regulated NSR pollutant shall be projected to

1 occur if the sum of the potential to emit from each new emissions unit following
2 completion of the project equals or exceeds the significant amount for that pollutant.

3 ~~[3. Emissions test for projects that involve clean units. An emission increase shall
4 not be deemed to occur for a project that will be constructed and operated at a clean
5 unit without causing the unit to lose its clean unit designation as provided in Sections 20
6 and 21 of this administrative regulation.]~~

7 3.[4.] Hybrid test for projects that involve multiple types of emissions units. A
8 significant emissions increase of a regulated NSR pollutant shall be projected to occur if
9 the sum of the emissions increases for each emissions unit, using a method specified in
10 subparagraphs 1 and 2 ~~[to 3]~~ of this paragraph as applicable for each emissions unit,
11 equals or exceeds the significant amount for that pollutant.

12 (b) Prior to beginning actual construction and after completing the applicable
13 procedure established in ~~[ef]~~ paragraph (a) of the subsection, the owner or operator
14 shall determine for each regulated NSR pollutant if a significant net emissions increase
15 will occur pursuant to 401 KAR 51:001, Section 1(144) and (218). ~~[51:001, Section
16 4(146).]~~

17 (5) For a plant-wide applicability limit (PAL) for a regulated NSR pollutant at a major
18 stationary source, the owner or operator of the major stationary source shall comply
19 with the applicable requirements of Section 20 ~~[23]~~ of this administrative regulation.

20 ~~[(6) An owner or operator undertaking a pollution control project (PCP) shall comply
21 with Section 22 of this administrative regulation.]~~

22 Section 2. Ambient Air Increments. (1) In areas designated as Class I or II,
23 increases in pollutant concentration over the baseline concentration shall be limited to

1 the following levels:

Pollutant	Maximum Allowable Increase (Micrograms per cubic meter)
Class I	
Particulate Matter:	
PM ₁₀ , annual arithmetic mean	4
PM ₁₀ , 24-hour maximum	8
Sulfur Dioxide:	
Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25
Nitrogen Dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate Matter:	
PM ₁₀ , annual	17

arithmetic mean	
PM ₁₀ , 24-hour maximum	30
Sulfur Dioxide:	
Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512
Nitrogen Dioxide:	
Annual arithmetic mean	25

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one (1) such period per year at any one (1) location.

Section 3. Ambient Air Ceilings. The concentration of a regulated NSR pollutant shall not exceed the concentration allowed under the national secondary ambient air quality standard or under the national primary ambient air quality standard, whichever concentration is lower for the pollutant for a period of exposure. [~~exposure~~:]

Section 4. Restrictions on Area Classifications. (1) The following areas, [~~areas~~] which were in existence on August 7, 1977, shall be Class I areas and shall not be redesignated:

(a) International parks;

(b) National wilderness areas and national memorial parks that [~~which~~] exceed 5,000 acres in size; and

1 (c) National parks that [~~which~~] exceed 6,000 acres in size.

2 (2) Any other area, unless otherwise specified in the legislation creating the area,
3 shall be [~~is~~] designated Class II but may be redesignated as provided in 40 C.F.R.
4 51.166(g).

5 (3) The visibility protection requirements of this administrative regulation shall apply
6 only to sources that [~~which~~] may impact a mandatory Class I federal area.

7 (4) The following areas may be redesignated only as Class I or II:

8 (a) An area that [~~which~~] as of August 7, 1977, exceeded 10,000 acres in size and
9 was a national monument, a national primitive area, a national preserve, a national
10 recreational area, a national wild and scenic river, a national wildlife refuge, a national
11 lakeshore or seashore; and

12 (b) A national park or national wilderness area established after August 7, 1977,
13 which exceeds 10,000 acres in size.

14 Section 5. Exclusions from Increment Consumption. (1) The cabinet may, after
15 notice and opportunity for at least one (1) public hearing to be held in accordance with
16 procedures established in 401 KAR 52:100, exclude the following concentrations in
17 determining compliance with a maximum allowable increase:

18 (a) Concentrations attributable to the increase in emissions from stationary sources
19 that have converted from the use of petroleum products, natural gas, or both by reason
20 of an order in effect under a federal statute or regulation over the emissions from these
21 sources before the effective date of the order;

22 (b) Concentrations attributable to the increase in emissions from sources that have
23 converted from using natural gas by reason of a natural gas curtailment plan in effect

1 pursuant to a federal statute over the emissions from those sources before the effective
2 date of the plan;

3 (c) Concentrations of particulate matter attributable to the increase in emissions from
4 construction or other temporary emission-related activities of new or modified sources;
5 and

6 (d) Concentrations attributable to the temporary increase in emissions of sulfur
7 dioxide, particulate matter, or nitrogen oxides from stationary sources ~~[that are]~~ affected
8 by plan revisions approved by the Administrator of the U.S. EPA as meeting the criteria
9 established ~~[specified]~~ in subsection (3) of this section.

10 (2)(a) Exclusion of concentrations shall not apply more than five (5) years after the
11 effective date of the order to which subsection (1)(a) of this section refers or the
12 curtailment plan to which subsection (1)(b) of this section refers, whichever is
13 applicable.

14 (b) If both an order and curtailment plan are applicable, an exclusion shall apply
15 more than five (5) years after the later of the two (2) effective dates.

16 (3) For excluding concentrations pursuant to subsection (1)(d) of this section:

17 (a) The time period over which the temporary emissions increase of sulfur dioxide,
18 particulate matter, or nitrogen oxides would occur shall be specified and shall not
19 exceed two (2) years in duration unless a longer time is approved by the U.S. EPA;

20 (b) The time period for excluding certain contributions in accordance with paragraph
21 (a) of this subsection shall not be renewable;

22 (c) An emissions increase from a stationary source shall not occur that will:

23 1. Impact a Class I area or an area in which an applicable increment is known to be

1 violated; or

2 2. Cause or contribute to the violation of a national ambient air quality standard; and

3 (d) Limitations shall be in effect at the end of the time period established in
4 paragraph (a) of this subsection, which ensure that the emissions levels from stationary
5 sources affected by the SIP revision shall not exceed the levels occurring from those
6 sources before the revision was approved.

7 Section 6. Stack Heights. (1) The degree of emissions limitation required for control
8 of an air pollutant under this administrative regulation shall not be affected by:

9 (a) So much of the stack height of a source as exceeds good engineering practice;
10 or

11 (b) Another dispersion technique.

12 (2) Subsection (1) of this section shall not apply to stack heights in existence before
13 December 31, 1970, or to dispersion techniques implemented before then.

14 Section 7. Exemptions. (1) Sections 8 to 16 of this administrative regulation shall
15 not apply to a particular major stationary source or major modification, if:

16 (a) The owner or operator:

17 1. Obtained the necessary federal, state, and local preconstruction approval
18 effective before September 22, 1982;

19 2. Commenced construction before September 22, 1982; and

20 3. Did not discontinue construction for a period of eighteen (18) months or more.

21 (b) 1. The major stationary source is a nonprofit health institution, a nonprofit
22 educational institution, or a major modification at such an institution; and

23 2. The ~~[institution, and the]~~ Governor of the Commonwealth of Kentucky requests

1 that it be exempt from those requirements.

2 (c) The source or modification is a major stationary source or major modification only
3 if fugitive emissions, to the extent quantifiable, are considered in calculating the
4 potential to emit of the stationary source or modification and the source does not belong
5 to any of the following categories:

- 6 1. Coal cleaning plants with thermal dryers;
- 7 2. Kraft pulp mills;
- 8 3. Portland cement plants;
- 9 4. Primary zinc smelters;
- 10 5. Iron and steel mills;
- 11 6. Primary aluminum ore reduction plants;
- 12 7. Primary copper smelters;
- 13 8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
- 14 9. Hydrofluoric, sulfuric, or nitric acid plants;
- 15 10. Petroleum refineries;
- 16 11. Lime plants;
- 17 12. Phosphate rock processing plants;
- 18 13. Coke oven batteries;
- 19 14. Sulfur recovery plants;
- 20 15. Carbon black plants, furnace process;
- 21 16. Primary lead smelters;
- 22 17. Fuel conversion plants;
- 23 18. Sintering plants;

1 19. Secondary metal production plants;

2 20. Chemical process plants, except ethanol production facilities producing ethanol
3 by natural fermentation under the North American Industry Classification System
4 (NAICS) codes 325193 or 312140; [plants;]

5 21. Fossil-fuel boilers, or combination of fossil-fuel boilers, totaling more than 250
6 million BTUs per hour heat input;

7 22. Petroleum storage and transfer units with a total storage capacity exceeding
8 300,000 barrels;

9 23. Taconite ore processing plants;

10 24. Glass fiber processing plants;

11 25. Charcoal production plants;

12 26. Fossil fuel-fired steam electric plants of more than 250 million BTUs per hour
13 heat input; or

14 27. Another stationary source category which, as of August 7, 1980, is being
15 regulated under 42 U.S.C. 7411 or 7412.

16 (d) The source or modification is a portable stationary source that has previously
17 received a permit under this administrative regulation; and

18 1. The owner or operator proposes to relocate the source and emissions of the
19 source at the new location will be temporary;

20 2. The emissions from the source will not exceed its allowable emissions;

21 3. The emissions from the source will not impact a Class I area or an area where an
22 applicable increment is known to be violated; and

23 4. a. Reasonable notice is given to the cabinet prior to the relocation identifying the

1 proposed new location and the probable duration of operation at the new location.

2 b. Notice shall be given to the cabinet not less than ten (10) days in advance of the
3 proposed relocation unless a different time duration is previously approved by the
4 cabinet pursuant to this subsection. [~~cabinet.~~]

5 (e) The source or modification was not subject to this administrative regulation with
6 respect to particulate matter requirements in effect before July 31, 1987, and the owner
7 or operator:

8 1. Obtained all final federal, state, and local preconstruction approvals or permits
9 necessary under the applicable SIP before July 31, 1987;

10 2. Commenced construction within eighteen (18) months after July 31, 1987; and

11 3. Did not discontinue construction for a period of eighteen (18) months or more and
12 completed construction within a reasonable period of time.

13 (f) 1. The source or modification was subject to this administrative regulation for
14 particulate matter requirements in effect before July 31, 1987, and the owner or
15 operator submitted an application for a permit under the applicable permit program
16 before that date; and

17 2. The [~~date, and the~~] cabinet subsequently determined that the application as
18 submitted was complete with respect to the particulate matter requirements then in
19 effect.

20 (2) Sections 8 to 16 of this administrative regulation shall not apply to a major
21 stationary source or major modification for a particular pollutant if the owner or operator
22 demonstrates that, for that pollutant, the source or modification is located in an area
23 designated as nonattainment pursuant to 42 U.S.C. 7407(d)(1)(A)(i).

(3) Sections 9, 11, and 13 of this administrative regulation shall not apply to a proposed major stationary source or major modification for a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from a modification:

(a) Will not impact a Class I area or an area where an applicable increment is known to be violated; and

(b) Will be temporary.

(4) Sections 9, 11, and 13 of this administrative regulation, as applicable to a maximum allowable increase for a Class II area, shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of BACT will be less than fifty (50) tons per year.

(5) The cabinet may exempt a proposed major stationary source or major modification from the monitoring requirements of Section 11 of this administrative regulation for a particular pollutant, if:

(a) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification will cause air quality impacts in an area, which are less than the amounts listed in the following table; or

Pollutant	Air Quality Level	Averaging Time
Carbon monoxide	575 $\mu\text{g}/\text{m}^3$	8-hour average

Nitrogen dioxide	14 $\mu\text{g}/\text{m}^3$	annual average
Particulate matter	10 $\mu\text{g}/\text{m}^3$ of PM_{10}	24-hour average
Sulfur dioxide	13 $\mu\text{g}/\text{m}^3$	24-hour average
Ozone	<p>A [No] de minimis air quality level is <u>not</u> provided for ozone. However, a net increase of 100 tons per year or more of volatile organic compounds <u>or nitrogen oxides</u> subject to this administrative regulation <u>shall be</u> [is] required to perform an ambient impact analysis including the gathering of ambient air quality data.</p>	
Lead	0.1 $\mu\text{g}/\text{m}^3$	3-month average
Fluorides	0.25 $\mu\text{g}/\text{m}^3$	24-hour average

Hydrogen sulfide	0.2 $\mu\text{g}/\text{m}^3$	1-hour average
Total reduced sulfur	10 $\mu\text{g}/\text{m}^3$	1-hour average
Reduced sulfur compounds	10 $\mu\text{g}/\text{m}^3$	1-hour average

(b) The concentrations of the pollutant in the area that the source or modification will affect are less than the concentrations listed in the table in paragraph (a) of this subsection, or the pollutant is not listed in the table.

(6) Permitting requirements equivalent to Section 9(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase for nitrogen oxides, if:

(a) The owner or operator of the source or modification submitted an application for a permit or permit revision under the applicable permit program before the date on which the provisions embodying the maximum allowable increase took effect in the Kentucky SIP; and

(b) The cabinet subsequently determined that the application as submitted before that date was complete.

(7) Permitting requirements equivalent to Section 10(2) of this administrative regulation shall not apply to a stationary source or modification for a maximum allowable increase

1 for PM₁₀, if:

2 (a) The owner or operator of the source or modification submitted an application for
3 a permit under the applicable permit program before the provisions embodying the
4 maximum allowable increases for PM₁₀ took effect as part of Kentucky's SIP; and

5 (b) The cabinet subsequently determined that the application as submitted before
6 that date was complete.

7 (8)(a) The cabinet may determine that the requirements for air quality monitoring of
8 PM₁₀ in Section 11 of this administrative regulation shall not apply to a particular source
9 or modification, if:

10 1. The owner or operator of the source or modification submitted an application for a
11 permit under this section on or before June 1, 1988; and

12 2. The cabinet subsequently determines that the application as submitted before that
13 date was complete, except for the requirements for monitoring particulate matter
14 specified in Section 11 of this administrative regulation.

15 (b) The requirements for air quality monitoring of PM₁₀ in Section 11 of this
16 administrative regulation shall apply to a particular source or modification if the owner or
17 operator of the source or modification submitted an application for a permit under 40
18 C.F.R. 52.21 or this administrative regulation after June 1, 1988, and not [nø] later than
19 December 1, 1988.

20 1. The data shall have been gathered over at least the period from February 1, 1988,
21 to the date the application becomes complete in accordance with Section 11 of this
22 administrative regulation; and

23 2. If the cabinet determines that a complete and adequate analysis can be

1 accomplished with monitoring data over a shorter period, which may not to be less than
2 four (4) months, the data that Section 11 of this administrative regulation requires shall
3 have been gathered over that shorter period.

4 (9) The requirements of Section 9(2) of this administrative regulation shall not apply
5 to a stationary source or modification for a maximum allowable increase for PM₁₀, if:

6 (a) The owner or operator of the source or modification submitted an application for
7 a permit under 40 C.F.R. 52.21 or this administrative regulation before the date the
8 provisions embodying the maximum allowable increases for PM₁₀ took effect, and the
9 cabinet subsequently determined that the application as submitted before that date was
10 complete.

11 (b) Instead, the requirements of Section 9(2) shall apply for the maximum allowable
12 increases for TSP as in effect on the day the application was submitted.

13 Section 8. Control Technology Review. (1) A major stationary source or major
14 modification shall meet each applicable emissions limitation under the Kentucky SIP
15 and each applicable emissions standard and standard of performance pursuant to 40
16 C.F.R. [under 40 C.F.R.] Parts 60 and 61.

17 (2) A new major stationary source shall apply BACT for each regulated NSR
18 pollutant for which the source has the potential to emit in significant amounts.

19 (3) A major modification shall apply BACT:

20 (a) For each regulated NSR pollutant that results in a significant net emissions
21 increase at the source; and

22 (b) For each proposed emissions unit at which a net emissions increase in the
23 pollutant occurs as a result of a physical change or change in the method of operation

1 of the unit.

2 (4) For phased construction projects:

3 (a) The cabinet shall review and modify, as appropriate, the BACT determination at
4 the latest reasonable time occurring not ~~[no]~~ later than eighteen (18) months prior to
5 commencement of construction of each independent phase of the project; and

6 (b) If requested by the cabinet, the ~~[The]~~ owner or operator of the applicable
7 stationary source shall ~~[may then be required to]~~ demonstrate the adequacy of a
8 previous BACT determination for the source.

9 Section 9. Source Impact Analysis. The owner or operator of the proposed source
10 or modification shall demonstrate that allowable emissions increases from the proposed
11 source or modification, in conjunction with all other applicable emissions increases or
12 reductions, including secondary emissions, shall not cause or contribute to air pollution
13 in violation of:

14 (1) A national ambient air quality standard in an air quality control region; or

15 (2) An applicable maximum allowable increase over the baseline concentration in
16 any area.

17 Section 10. Air Quality Models. (1) Estimates of ambient concentrations shall be
18 based on the applicable air quality models, databases, ~~[data bases,]~~ and other
19 requirements specified in 40 C.F.R. Part 51, Appendix W, "Guideline on Air Quality
20 Models, Appendix A." ~~[Models" (2003), Appendix A"]~~

21 (2) If an air quality model specified in 40 C.F.R. Part 51, Appendix W, is
22 inappropriate, the model may be modified or another model substituted.

23 (a) The use of a modified or substitute model shall be:

- 1 1. Subject to notice and opportunity for public comment under 401 KAR 52:100; and
- 2 2. Approved in writing by the U.S. EPA pursuant to 40 C.F.R. 51.166(l). ~~[Made on a~~
- 3 ~~case-by-case basis and receive written approval from the U.S. EPA]~~

4 (b) Methods similar to those outlined in the "Workbook for the Comparison of Air
5 Quality Models," specified in 401 KAR 50:040, Section 1(3), shall be used to determine
6 the comparability of air quality models.

7 Section 11. Air Quality Analysis. (1) Preapplication analysis.

8 (a) An application for a permit or permit revision under 401 KAR 52:020 and this
9 administrative regulation shall contain an analysis of ambient air quality in the area that
10 the major stationary source or major modification will affect for each of the following:

- 11 1. For a source, each pollutant that the source will have the potential to emit in a
12 significant amount;
- 13 2. For a modification, each pollutant that the modification will result in a significant
14 net emissions increase.

15 (b) For a pollutant that does not have a national ambient air quality standard, the
16 analysis shall contain air quality monitoring data the cabinet determines necessary to
17 assess ambient air quality for that pollutant in an area that the emissions of that
18 pollutant will affect.

19 (c) For pollutants, other than nonmethane hydrocarbons, for which a standard exists,
20 the analysis shall contain continuous air quality monitoring data gathered to determine if
21 emissions of that pollutant will cause or contribute to a violation of the standard or a
22 maximum allowable increase.

23 (d) 1. The required continuous air quality monitoring data shall have been gathered

1 over a period of at least one (1) year and shall represent at least the year preceding
2 receipt of the application.

3 2. If the cabinet determines that a complete and adequate analysis may be
4 accomplished with monitoring data gathered over a period shorter than one (1) year,
5 that period shall be not less than four (4) months.

6 (e) For analysis of volatile organic compounds, the owner or operator of a proposed
7 major stationary source or major modification who satisfies all conditions of 40 C.F.R.
8 Part 51, Appendix S, section IV may provide postapproval monitoring data for ozone
9 instead of providing preconstruction data as required in this section.

10 (f) For air quality monitoring of PM₁₀ under Section 7(8)(a) and (b) of this
11 administrative regulation, the owner or operator of the source or major modification shall
12 use a monitoring method approved by the cabinet pursuant to 40 C.F.R. Part 53 and
13 shall estimate the ambient concentrations of PM₁₀ using the data collected by that
14 approved monitoring method in accordance with estimating procedures approved by the
15 cabinet pursuant to 40 C.F.R Part 58, Appendix A.

16 (2) Postconstruction monitoring. After construction of a major stationary source or
17 major modification, the owner or operator shall conduct ambient monitoring that the
18 cabinet determines is necessary to determine the effect emissions from the stationary
19 source or modification may have, or are having, on air quality in an area.

20 (3) Operation of monitoring stations. During the operation of air quality monitoring
21 stations, the owner or operator of a major stationary source or major modification shall
22 meet the requirements of 40 C.F.R. Part 58, Appendix A [~~Appendix B~~] to satisfy the air
23 quality analysis requirements of this section.

1 Section 12. Source Information. The owner or operator of a proposed source or
2 modification shall submit to the cabinet all information necessary to perform an analysis
3 or make a determination required under this administrative regulation.

4 (1) The information shall include:

5 (a) A description of the nature, location, design capacity, and typical operating
6 schedule of the source or modification, including specifications and drawings showing
7 its design and plant layout;

8 (b) A detailed schedule for construction of the source or modification; and

9 (c) A detailed description of the system of continuous emissions reduction planned
10 for the source or modification, emissions estimates, and any [other] information
11 necessary to determine that BACT will be applied.

12 (2) Upon request of the cabinet, the owner or operator shall also provide information
13 on:

14 (a) The air quality impact of the source or modification, including meteorological and
15 topographical data necessary to estimate the impact; and

16 (b) The air quality impacts and the nature and extent of general commercial,
17 residential, industrial, and other growth that has occurred since August 7, 1977, in the
18 area the source or modification will affect.

19 Section 13. Additional Impact Analysis. (1) The owner or operator shall provide an
20 analysis of the impairment to visibility, soils, and [~~soils and~~] vegetation that will occur as
21 a result of:

22 (a) The source or modification; and

23 (b) General commercial, residential, industrial, and [~~industrial and~~] other growth

1 associated with the source or modification.

2 (2) The owner or operator shall not be required to provide an analysis of the impact
3 on vegetation not having [no] significant commercial or recreational value.

4 (3) The owner or operator shall provide an analysis of the air quality impact
5 projected for the area as a result of general commercial, residential, industrial, and
6 ~~[industrial and]~~ other growth associated with the source or modification.

7 (4) Visibility monitoring.

8 (a) The cabinet may require monitoring of visibility in a Class I area impacted by the
9 proposed new stationary source or major modification using:

10 (1) Human observations;

11 (2) Teleradiometers;

12 (3) Photographic cameras;

13 (4) Nephelometers;

14 (5) Fine particulate monitors; or

15 (6) Other appropriate methods as specified by the U.S. EPA.

16 (b) The method selected shall be determined on a case-by-case basis by the cabinet
17 pursuant to 40 C.F.R. 51.166. ~~[cabinet.]~~

18 (c) Visibility monitoring required by the cabinet in a Class I area shall be approved by
19 the federal land manager.

20 (d) Data obtained from visibility monitoring shall be made available to the cabinet,
21 the U.S. EPA, and the federal land manager, upon request.

22 Section 14. Sources Impacting Class I Areas; Additional Requirements. (1) Notice
23 to U.S. EPA and federal land managers. The cabinet shall provide;

1 (a) Written notice to the U.S. EPA, the federal land manager, and the federal official
2 charged with direct responsibility for management of lands within a Class I area of a
3 permit application for a proposed major stationary source or major modification that may
4 affect the Class I area.

5 (b) Notice promptly after receiving the permit application. The notice shall:

6 1. Include a copy of all information relevant to the permit application; [application:]

7 2. Be given within thirty (30) days of receipt and at least sixty (60) days prior to the
8 public hearing on the application for a permit to construct; and

9 3. Include an analysis of the proposed source's anticipated impacts on visibility in the
10 Class I area.

11 (c) The cabinet shall also provide the federal land manager and other federal
12 officials with a copy of the preliminary determination and shall make available to them
13 the materials used in making that determination, promptly after the cabinet makes it.
14 The cabinet shall also notify all affected federal land managers within thirty (30) days of
15 receipt of an advanced notification of the permit application.

16 (2) Federal land manager. The federal land manager and the federal official charged
17 with direct responsibility for management of lands located in a Class I area shall have
18 an affirmative responsibility to protect visibility and other air quality related values of the
19 lands and to consider, in consultation with the cabinet, if a proposed source or
20 modification will have an adverse impact on those values.

21 (3) Visibility analysis.

22 (a) The cabinet shall consider an analysis performed by the federal land manager,
23 which is provided within thirty (30) days of the notice and analysis required by

1 subsection (1) of this section, which shows that a proposed new major stationary source
2 or major modification may have an adverse impact on visibility in a Class I area.

3 (b) If the cabinet finds the analysis does not demonstrate to the cabinet's satisfaction
4 that an adverse impact on visibility will result in the Class I area, the cabinet shall, in the
5 public notice required in 401 KAR 52:100, either explain that decision or give notice as
6 to where the explanation may be obtained.

7 (4) Denial; impact on air quality related values.

8 (a) The federal land manager of lands located in a Class I area may demonstrate to
9 the cabinet that the emissions from a proposed source or modification will have an
10 adverse impact on the visibility and other air quality related values of those lands, even
11 though the change in air quality resulting from emissions from the proposed source or
12 modification will not cause or contribute to concentrations that will exceed the maximum
13 allowable increases for a Class I area.

14 (b) If the cabinet concurs with the demonstration specified in paragraph (a) of this
15 subsection, the cabinet shall not issue the permit or permit revision.

16 (5) Class I variances.

17 (a) The owner or operator of a proposed source or modification may demonstrate to
18 the federal land manager that the emissions from the source or modification will not
19 have ~~[have-no]~~ adverse impact on the visibility or other air quality related values of lands
20 located in a Class I area, even though the change in air quality resulting from emissions
21 from the source or modification will cause or contribute to concentrations that will
22 exceed the maximum allowable increases for a Class I area as specified in Section 2(1)
23 of this administrative regulation.

1 (b) If the federal land manager concurs with the demonstration specified in
2 paragraph (a) of this subsection and ~~[he—she]~~ certifies accordingly, the cabinet may, if the
3 other applicable requirements of this administrative regulation are met, issue the permit
4 or permit revision with emissions limitations ~~[that—are]~~ necessary to assure that
5 emissions of sulfur dioxide, particulate matter, and nitrogen oxides will not exceed the
6 maximum allowable increases over minor source baseline concentration for the
7 pollutants as specified in Section 2(1) of this administrative regulation.

8 (6) Sulfur dioxide variance by governor with federal land manager's concurrence.

9 (a) The owner or operator of a proposed source or modification, which cannot be
10 approved under subsection (5) of this section because the source cannot be
11 constructed without exceeding a maximum allowable increase in sulfur dioxide
12 applicable to a Class I area for a period of twenty-four (24) hours or less, may
13 demonstrate to the Governor of the Commonwealth of Kentucky that a variance will not
14 adversely affect the visibility or other air quality related values of the area.

15 (b) The governor, after consideration of the federal land manager's recommendation,
16 if applicable, and subject to the federal land manager's concurrence, ~~[his concurrence,]~~
17 may, after notice and public hearing, grant a variance from the maximum allowable
18 increase.

19 (c) If a variance is granted, the cabinet shall issue a permit or permit revision to the
20 source or modification under the requirements of 401 KAR Chapter 52 if the other
21 applicable requirements of this administrative regulation are met.

22 (7) Variance by the governor with the President's concurrence.

23 (a) If the Governor of the Commonwealth of Kentucky recommends a variance in

1 which the federal land manager does not concur, the recommendations of the governor
2 and the federal land manager shall be transmitted to the President of the United States
3 of America.

4 (b) If the variance is approved by the President, the cabinet shall issue a permit or
5 permit revision in accordance with the requirements of 401 KAR Chapter 52, if the other
6 applicable requirements of this administrative regulation are met.

7 (8) Emissions limitations for presidential or gubernatorial variance. For a permit or
8 permit revision issued pursuant to subsections (6) or (7) of this section, the ~~[section the]~~
9 source or modification shall comply with the emissions limitations necessary to assure
10 that:

11 (a) Emissions of sulfur dioxide from the source or modification shall not, during a day
12 on which the other applicable maximum allowable increases are exceeded, cause or
13 contribute to concentrations that will exceed the maximum allowable increases over the
14 baseline concentration as specified in the following table; and

Maximum Allowable Increase (Micrograms per cubic meter)		
	Terrain areas	
Period of Exposure	Low	High
24-hour maximum	36	62
3-hour maximum	130	221

15 (b) Emissions shall not cause or contribute to concentrations that exceed other
16 applicable maximum allowable increases for periods of exposure of twenty-four (24)

1 hours or less for more than a total of eighteen (18) days that [which] are not necessarily
2 consecutive during an annual period.

3 Section 15. Public Participation. The cabinet shall follow the applicable procedures
4 of 401 KAR 52:100, [and] 40 C.F.R. 51.166(q), [~~51.166(q)~~] and this administrative
5 regulation in processing applications under this administrative regulation.

6 Section 16. Source Obligation. (1) An owner or operator of a source or modification
7 subject to this administrative regulation who begins actual construction after September
8 22, 1982, shall construct and operate the source or modification in accordance with the
9 application submitted to the cabinet under this administrative regulation and 401 KAR
10 52:020 or under the terms of an approval to construct.

11 (2)(a) Approval to construct shall become invalid if construction:

- 12 1. Is not commenced within eighteen (18) months after receipt of the approval;
13 2. Is discontinued for a period of eighteen (18) months or more; or
14 3. Is not completed within a reasonable time.

15 (b) The cabinet may extend the eighteen (18) month period upon a satisfactory
16 demonstration [~~showing~~] that an extension is justified.

17 1. An extension shall not apply to the time period between construction of the
18 approved phases of a phased construction project; and

19 2. Each phase shall commence construction within eighteen (18) months of the
20 projected and approved commencement date.

21 (3) Approval to construct shall not relieve an owner or operator of the responsibility
22 to comply fully with 401 KAR Chapters 50 to 68 and other requirements of local, state,
23 or federal law.

1 (4) If a particular source or modification becomes a major stationary source or major
2 modification solely by virtue of a relaxation in an enforceable limitation that was
3 established after August 7, 1980, on the capacity of the source or modification to emit a
4 pollutant, Sections 8 to 16 of this administrative regulation shall apply to the source or
5 modification as though construction had not yet commenced on the source or
6 modification.

7 (5)(a) The provisions of this subsection shall apply to projects at existing emissions
8 units at a major stationary source other than projects at a ~~[clean unit or at a]~~ source with
9 a PAL, if:

10 1. There is a reasonable possibility that a project that is not part of a major
11 modification may result in a significant emissions increase; and

12 2. The owner or operator elects to use the method specified in 401 KAR 51:001,
13 Section 1 (199)(b) ~~[(202)(b)]~~ to calculate projected actual emissions.

14 (b) Before beginning actual construction of a project specified in paragraph (a) of this
15 subsection, the owner or operator shall document and maintain a record of the following
16 information:

17 1. A description of the project;

18 2. Identification of the emissions units for which emissions of a regulated NSR
19 pollutant could be affected by the project; and

20 3. A description of the applicability test used to determine that the project is not a
21 major modification for any regulated NSR pollutant, including:

22 a. Baseline actual emissions;

23 b. Projected actual emissions;

1 c. Amount of emissions excluded in calculating projected actual emissions and an
2 explanation for why that amount was excluded; and

3 d. Any applicable netting calculations.

4 (c) For a project specified in paragraph (a) of this subsection, the owner or operator
5 shall:

6 1. Monitor the emissions of any regulated NSR pollutant that could increase as a
7 result of the project and that are emitted by any emissions unit identified in paragraph
8 (b)2 of this subsection; and

9 2. Calculate and maintain a record of the annual emissions, in tons per year on a
10 calendar year basis for:

11 a. Five (5) years following resumption of regular operations after the change; or

12 b. Ten (10) years following resumption of regular operations after the change if the
13 project increases the design capacity or potential to emit of the regulated NSR pollutant
14 at the emissions unit.

15 (d)[1-] If the emissions unit is an existing EUSGU, before beginning actual
16 construction, the owner or operator:

17 1. Shall provide a copy of the information in paragraph (b) of this subsection to the
18 cabinet, but shall not be required to obtain a determination from the cabinet before
19 beginning actual construction; and [operator:

20 ~~—a. Shall provide a copy of the information in paragraph (b) of this subsection to the~~
21 ~~cabinet; but~~

22 ~~—b. Shall not be required to obtain a determination from the cabinet before beginning~~
23 ~~actual construction.]~~

1 2. Shall submit a report to the cabinet within sixty (60) days after the end of each
2 year during which records are required to be generated under paragraph (b) of this
3 subsection that reports [~~set-out~~] the unit's annual emissions during the calendar year
4 that preceded submission of the report.

5 (e)1. For an existing unit other than an EUSGU, the owner or operator shall submit a
6 report to the cabinet if:

7 a. The annual emissions, in tons per year, from a project identified in paragraph (a)
8 of this subsection exceeds the baseline actual emissions, as documented and
9 maintained pursuant to paragraph (b)3 of this subsection, by a significant amount for
10 that regulated NSR pollutant; and

11 b. The emissions differ from the preconstruction projection as documented and
12 maintained pursuant to paragraph (b)3 of this subsection.

13 2. The report shall be submitted within sixty (60) days after the end of the year
14 during which records are required to be generated under paragraph (b) of this
15 subsection and shall contain the following:

16 a. The name, address, and [~~address-and~~] telephone number of the major stationary
17 source;

18 b. The annual emissions as calculated pursuant to paragraph (c) of this subsection;
19 and

20 c. Any other information that the owner or operator wishes to include in the report.

21 (f) The owner or operator of the source shall make the information required to be
22 documented and maintained under to this subsection available for review upon request
23 for inspection by the cabinet or the general public pursuant to 401 KAR 52:100.

1 Section 17. Environmental Impact Statements. If a proposed source or modification
2 is subject to action by a federal agency that may ~~[which might]~~ necessitate preparation
3 of an environmental impact statement under 42 U.S.C. 4321 to 4370d (the National
4 Environmental Policy Act), review by the cabinet conducted in accordance with this
5 administrative regulation shall be coordinated with the broad environmental reviews
6 under that Act and under 42 U.S.C. 7609 to the maximum extent feasible and
7 reasonable.

8 Section 18. Innovative Control Technology. (1) An owner or operator of a proposed
9 major stationary source or major modification may make written request that the cabinet
10 approve a system of innovative control technology. ~~[request the cabinet in writing to~~
11 ~~approve a system of innovative control technology.]~~

12 (2) The cabinet may, with the consent of the governors of other affected states,
13 determine that the source or modification may employ a system of innovative control
14 technology if:

15 (a) The proposed control system will not cause or contribute to an unreasonable risk
16 to public health, welfare, or safety in its operation or function;

17 (b) The owner or operator agrees to achieve a level of continuous emissions
18 reduction equivalent to that which would have been required under Section 8(2) of this
19 administrative regulation by a date, specified ~~[date specified]~~ by the cabinet that is not
20 later than four (4) years from the time of start-up or seven (7) years from permit
21 issuance; ~~[cabinet. The date shall not be later than four (4) years from the time of start-~~
22 ~~up or seven (7) years from permit issuance;]~~

23 (c) The source or modification shall ~~[will]~~ meet requirements equivalent to those in

1 Sections 8 and 9 of this administrative regulation based on the emissions rate that the
2 stationary source employing the system of innovative control technology shall [~~will~~] be
3 required to meet on the date specified by the cabinet;

4 (d) The source or modification shall [~~will~~] not before the date specified by the
5 cabinet:

6 1. Cause or contribute to a violation of an applicable national ambient air quality
7 standard; or

8 2. Impact an area in which an applicable increment is known to be violated;

9 (e) Section 14 of this administrative regulation relating to Class I areas has been
10 satisfied for all periods during the life of the source or modification; and

11 (f) All other applicable requirements including those for public participation have
12 been met.

13 (3) The cabinet shall withdraw approval to employ a system of innovative control
14 technology if:

15 (a) The proposed system fails by the specified date to achieve the required
16 continuous emissions reduction rate;

17 (b) The proposed system fails before the specified date and contributes to an
18 unreasonable risk to public health, welfare, or safety; or

19 (c) The cabinet decides that the proposed system is unlikely to achieve the required
20 level of control or to protect the public health, welfare, or safety.

21 (4) If a source or modification fails to meet the required level of continuous
22 emissions reduction within the specified time period or the approval is withdrawn in
23 accordance with subsection (3) of this section, the cabinet may allow the source or

1 modification up to an additional three (3) years to meet the requirement for the
2 application of BACT through use of a demonstrated system of control.

3 Section 19. Permit Condition Rescission. (1)(a) An owner or operator holding a
4 permit for a stationary source or modification that [which] contains conditions pursuant
5 to 401 KAR 51:015 or [401 KAR] 51:016E may request that the cabinet rescind the
6 applicable conditions.

7 (b) An owner or operator of a stationary source or modification who holds a permit
8 for the source or modification that [which] was issued under this administrative
9 regulation as in effect on July 30, 1987, or an earlier version of this administrative
10 regulation, may request that the cabinet rescind the permit or a particular portion of the
11 permit.

12 (2) The cabinet shall rescind a permit condition if requested and if the applicant can
13 demonstrate to the satisfaction of the cabinet that this administrative regulation does not
14 apply to the source or modification or to a portion of the source or modification.

15 ~~[Section 20. Clean Unit Test for Emissions Units that are Subject to BACT or LAER.~~
16 ~~For any emissions unit that is subject to BACT or LAER and for which the cabinet has~~
17 ~~issued a major NSR permit in the past ten (10) years, an owner or operator of a major~~
18 ~~stationary source may use the clean unit test provisions specified in this section to~~
19 ~~determine if an emissions increase at a clean unit is part of a project that is a major~~
20 ~~modification.~~

21 ~~—(1) General provisions for clean units.~~

22 ~~—(a) The cabinet shall make a separate clean unit designation for each pollutant~~
23 ~~emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

1 ~~—(b) A project for which the owner or operator begins actual construction shall be~~
2 ~~considered to have occurred while the emissions unit is a clean unit, if actual~~
3 ~~construction begins:~~

4 ~~— 1. After the effective date of the clean unit designation as determined pursuant to~~
5 ~~subsection (3) of this section; and~~

6 ~~— 2. Before the expiration date of the clean unit designation as determined pursuant to~~
7 ~~subsection (4) of this section.~~

8 ~~—(c) For an emissions unit to retain its clean unit designation during a project at a~~
9 ~~clean unit, the project shall not:~~

10 ~~— 1. Cause the need for a change in the emissions limitations or work practice~~
11 ~~requirements adopted in conjunction with BACT in the permit for the unit; and~~

12 ~~— 2. Alter any physical or operational characteristics that formed the basis for the~~
13 ~~BACT determination as specified in subsection (5)(d) of this section.~~

14 ~~—(d) Unless an emissions unit requalifies as a clean unit according to subsection~~
15 ~~(2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of~~
16 ~~the necessary permit revisions, if:~~

17 ~~— 1. The project causes the need for a change in the emissions limitations or work~~
18 ~~practice requirements that were determined in conjunction with BACT in the permit for~~
19 ~~the unit; or~~

20 ~~— 2. The project will alter any physical or operational characteristics that formed the~~
21 ~~basis for the BACT determination as specified in subsection (5)(d) of this section.~~

22 ~~—(e) Clean unit designation shall end immediately prior to the time actual construction~~
23 ~~begins on a project that will cause a unit to lose its clean unit designation if the owner or~~

operator begins actual construction on a project before applying for a permit revision.

~~(f) A project that causes an emissions unit to lose its clean unit designation shall be subject to the applicability requirements of Section 1(4)(a)1, 2, and 4 and (b) of this administrative regulation as if the emissions unit is not a clean unit.~~

~~(2) Qualifying or requalifying to use the clean unit applicability test.~~

~~(a) An emissions unit shall automatically qualify as a clean unit if the unit meets the requirements in this paragraph.~~

~~1. Permitting requirement. The owner or operator of an emissions unit shall have received a major NSR permit within the past ten (10) years and shall maintain and provide information upon request by the cabinet or U.S. EPA to demonstrate that this permitting requirement is met.~~

~~2. Qualifying air pollution control technologies requirement. Air pollution emissions from the emissions unit shall be reduced through the use of air pollution control technology, including pollution prevention or work practices, that meets the following requirements:~~

~~a. The control technology shall achieve the BACT or LAER level of emissions reductions determined by issuance of a major NSR permit within the past ten (10) years;~~

~~b. The emissions unit shall not be eligible for the clean unit designation if the BACT determination did not result in a requirement to reduce emissions below the level of a standard, uncontrolled, new emissions unit of the same type; and~~

~~c. The owner or operator shall have made an investment to install the control technology. An investment shall include expenses to research the application of or to~~

1 actually apply a pollution prevention technique to the emissions unit or to retool the unit
2 to apply a pollution prevention technique.

3 — (b) ~~Requalifying for the clean unit designation. After the original clean unit~~
4 ~~designation expires or is lost, an emissions unit may re-qualify as a clean unit under the~~
5 ~~provisions of this paragraph or under Section 21 of this administrative regulation.~~

6 — 1. ~~For an emissions unit that is requalifying for clean unit designation, an owner or~~
7 ~~operator shall obtain a new major NSR permit or permit revision, as applicable, issued~~
8 ~~pursuant to 401 KAR 52:020.~~

9 — 2. ~~The permit shall require compliance with the current day BACT or LAER, and the~~
10 ~~emissions unit shall meet the requirements in subsection (3)(a) of this section.~~

11 — (3) ~~Effective date of the clean unit designation. The date that the owner or operator~~
12 ~~may begin to use the clean unit test to determine if a project involving an emissions unit~~
13 ~~is a major modification shall be determined according to paragraph (a) or (b) of this~~
14 ~~subsection, as applicable.~~

15 — (a) ~~The effective date for an original clean unit designation and for an emissions unit~~
16 ~~that requalifies as a clean unit by implementing a new control technology to meet~~
17 ~~current day BACT shall be:~~

18 — 1. ~~The earlier of the date the emissions unit's air pollution control technology is~~
19 ~~placed into service or three (3) years after the date the major NSR permit or permit~~
20 ~~revision is issued; and~~

21 — 2. ~~No sooner than the date that provisions for clean units become effective in the~~
22 ~~Kentucky SIP.~~

23 — (b) ~~The effective date for emissions units that requalify for the clean unit designation~~

1 ~~using an existing control technology shall be the date the new major NSR permit or~~
2 ~~permit revision is issued.~~

3 ~~—(4) Clean unit expiration. The date the owner or operator shall no longer be allowed~~
4 ~~to use the clean unit test to determine if a project involving an emissions unit is, or is~~
5 ~~part of, a major modification shall be determined according to paragraph (a) or (b) of~~
6 ~~this subsection, as applicable.~~

7 ~~—(a) For an emissions unit that automatically qualifies as a clean unit under~~
8 ~~subsection (2)(a) of this section or a unit that requalifies by implementing new control~~
9 ~~technology to meet current day BACT, the expiration date of the clean unit designation~~
10 ~~shall be:~~

11 ~~—1. Ten (10) years after the effective date or ten (10) years after the date the~~
12 ~~equipment went into service, whichever is earlier; or~~

13 ~~—2. At any time the owner or operator fails to comply with the provisions for~~
14 ~~maintaining the clean unit designation pursuant to subsection (6) of this section.~~

15 ~~—(b) The clean unit designation for an emissions unit that requalifies for the clean unit~~
16 ~~designation using an existing control technology shall expire:~~

17 ~~—1. Ten (10) years after the effective date; or~~

18 ~~—2. At any time the owner or operator fails to comply with the provisions for~~
19 ~~maintaining the clean unit designation according to subsection (6) of this section.~~

20 ~~—(5) Required Title V permit content for a clean unit. The Title V permit for a major~~
21 ~~stationary source with a clean unit shall, after the effective date of the clean unit~~
22 ~~designation and in accordance with the applicable provisions of 401 KAR Chapter 52,~~
23 ~~but not later than the date the Title V permit is renewed, include the following terms and~~

1 conditions:

2 ~~— (a) A statement indicating that the emissions unit qualifies as a clean unit and~~
3 ~~identifying the pollutant for which this clean unit designation applies.~~

4 ~~— (b) The effective date of the clean unit designation.~~

5 ~~— 1. If the exact effective date is not known on the date the clean unit designation is~~
6 ~~initially recorded in the Title V permit, the permit or permit revision shall describe the~~
7 ~~event that shall determine the effective date. Once the effective date is determined, the~~
8 ~~owner or operator shall notify the cabinet of the exact date; and~~

9 ~~— 2. If originally absent from the Title V permit, the effective date of the clean unit shall~~
10 ~~be added to the Title V permit at the first opportunity for any reason the permit is~~
11 ~~opened, but not later than the next renewal.~~

12 ~~— (c) The expiration date of the clean unit designation.~~

13 ~~— 1. If the exact expiration date is not known at the date the clean unit designation is~~
14 ~~initially recorded into the Title V permit, the permit shall describe the event that shall~~
15 ~~determine the expiration date;~~

16 ~~— 2. Once the expiration date is determined, the owner or operator shall notify the~~
17 ~~cabinet of the exact date; and~~

18 ~~— 3. If originally absent for the Title V permit, the expiration date shall be added to the~~
19 ~~Title V permit at the first opportunity for any reason the permit is opened, but not later~~
20 ~~than the next renewal.~~

21 ~~— (d) All emissions limitations and work practice requirements adopted in conjunction~~
22 ~~with BACT and any physical or operational characteristics that formed the basis for the~~
23 ~~BACT determination.~~

~~1 (e) Monitoring, recordkeeping, and reporting requirements as necessary to
2 demonstrate that the emissions unit continues to meet the criteria for maintaining the
3 clean unit designation pursuant to subsection (6) of this section.~~

~~4 (f) Terms reflecting the owner or operator's duty to maintain the clean unit
5 designation and the consequences of failing to do so, pursuant to subsection (6) of this
6 section.~~

~~7 (6) Maintaining the clean unit designation.~~

~~8 (a) The owner or operator of a clean unit shall conform to the provisions of this
9 subsection to maintain the clean unit designation.~~

~~10 1. The clean unit shall comply with the emissions limitations or work practice
11 requirements adopted in conjunction with the BACT that are recorded in the major NSR
12 permit or permit revision and subsequently reflected in the Title V permit;~~

~~13 2. The owner or operator shall not make a physical change in or change in the
14 method of operation of the clean unit that causes the emissions unit to function in a
15 manner that is inconsistent with the physical or operational characteristics that formed
16 the basis for the BACT determination;~~

~~17 3. The clean unit shall comply with all terms and conditions in the Title V permit
18 related to the unit's clean unit designation; and~~

~~19 4. The clean unit shall continue to control emissions using the specific air pollution
20 control technology that is the basis for its clean unit designation. The clean unit
21 designation shall end if the emissions unit or control technology is replaced.~~

~~22 (b) The requirements of this subsection shall apply to each pollutant for which the
23 cabinet has designated an emissions unit a clean unit. Failing to conform to the~~

1 ~~restrictions for one (1) pollutant shall only affect the clean unit designation for that~~
2 ~~pollutant.~~

3 ~~—(7) Netting at clean units.~~

4 ~~—(a) Emissions changes that occur at a clean unit shall not be included in calculating~~
5 ~~a significant net emissions increase to be used in a netting analysis unless:~~

6 ~~—1. Such use occurs before the effective date of the clean unit designation, or after~~
7 ~~the clean unit designation expires; or~~

8 ~~—2. The emissions unit reduces emissions below the level that qualified the unit as a~~
9 ~~clean unit.~~

10 ~~—(b) The owner or operator may generate a credit for the difference between the level~~
11 ~~that qualified the unit as a clean unit and the new emissions limitation if:~~

12 ~~—1. The unit reduces emissions below the level that qualified the unit as a clean unit;~~
13 ~~and~~

14 ~~—2. The reductions are surplus, quantifiable, and permanent.~~

15 ~~—(c) For generating offsets, reductions shall also be federally enforceable.~~

16 ~~—(d) For determining creditable net emissions increases and decreases, the~~
17 ~~reductions shall also be enforceable as a practical matter.~~

18 ~~—(8) Effect of area redesignation on clean units.~~

19 ~~—(a) The clean unit designation of an emissions unit shall not be affected by~~
20 ~~redesignation of the attainment status of the area in which it is located.~~

21 ~~—(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a~~
22 ~~clean unit according to the requirements currently applicable in the area, regardless of~~
23 ~~the area's original attainment status during the previous designation period.~~

~~Section 21. Clean Unit Provisions for Emissions Units that Achieve an Emissions Limitation Comparable to BACT. For an emissions unit at a major stationary source that does not qualify as a clean unit under Section 20 of this administrative regulation but is achieving a level of emissions control comparable to BACT, the owner or operator may use the clean unit test specified in this section to determine if an emissions increase at the unit is part of a project that is a major modification.~~

~~(1) General provisions for clean units.~~

~~(a) The cabinet shall make a separate clean unit designation for each pollutant emitted by an emissions unit for which the emissions unit qualifies as a clean unit.~~

~~(b) A project for which the owner or operator begins actual construction shall be considered to have occurred while the emissions unit is a clean unit, if actual construction begins:~~

~~1. After the effective date of the clean unit designation as determined pursuant to subsection (4) of this section; and~~

~~2. Before the expiration date of the clean unit designation as determined pursuant to subsection (5) of this section.~~

~~(c) For an emissions unit to retain its clean unit designation during a project at a clean unit, the project shall not:~~

~~1. Cause the need for a change in the emissions limitations or work practice requirements in the permit for the unit that have been determined to be comparable to BACT according to subsection (3) of this section; and~~

~~2. Alter any physical or operational characteristics that formed the basis for determining that the emissions unit's control technology achieves a level of emissions~~

1 ~~control comparable to BACT according to subsection (7)(d) of this section.~~

2 ~~—(d) Unless an emissions unit requalifies as a clean unit according to subsection~~
3 ~~(2)(b) of this section, the unit shall lose its designation as a clean unit upon issuance of~~
4 ~~the necessary permit revisions, if:~~

5 ~~—1. The project causes the need for a change in the emissions limitations or work~~
6 ~~practice requirements in the permit for the unit that have been determined to be~~
7 ~~comparable to BACT; or~~

8 ~~—2. The project will alter any physical or operational characteristics that formed the~~
9 ~~basis for determining that the emissions unit's control technology achieves a level of~~
10 ~~emissions control comparable to BACT.~~

11 ~~—(e) Clean unit designation shall end immediately prior to the time actual construction~~
12 ~~begins on a project that will cause a unit to lose its clean unit designation, if the owner~~
13 ~~or operator begins actual construction on a project before applying for a permit revision.~~

14 ~~—(f) A project that causes an emissions unit to lose its clean unit designation shall be~~
15 ~~subject to the applicability requirements of Section 1(4)(a)1, 2, and 4 and (b) of this~~
16 ~~administrative regulation as if the emissions unit is not a clean unit.~~

17 ~~—(2) Qualifying or requalifying to use the clean unit applicability test.~~

18 ~~—(a) An emissions unit shall qualify as a clean unit if the unit meets the requirements~~
19 ~~in this paragraph.~~

20 ~~—1. Qualifying air pollution control technology requirement. Air pollutant emissions~~
21 ~~from an emissions unit shall be reduced through the use of air pollution control~~
22 ~~technology, including pollution prevention or work practices, and the owner or operator~~
23 ~~shall:~~

1 ~~— a. Demonstrate that an emissions unit's control technology is comparable to BACT~~
2 ~~according to the requirements of subsection (3) of this section;~~

3 ~~— b. Demonstrate that an emissions unit's control technology reduces emissions below~~
4 ~~the level of a standard, uncontrolled emissions unit of the same type; and~~

5 ~~— c. Have made an investment to install the control technology. An investment shall~~
6 ~~include expenses to research the application of, or to actually apply, a pollution~~
7 ~~prevention technique to the emissions unit or to retool the unit to apply a pollution~~
8 ~~prevention technique.~~

9 ~~— 2. Impact of emissions from the unit requirement. The allowable emissions from the~~
10 ~~emissions unit, as determined by the cabinet, shall not:~~

11 ~~— a. Cause or contribute to a violation of any national ambient air quality standard or~~
12 ~~PSD increment; or~~

13 ~~— b. Adversely impact visibility or another air quality related value that has been~~
14 ~~identified as a federal Class I area by a federal land manager and for which information~~
15 ~~is available to the general public.~~

16 ~~— 3. Date of installation requirement.~~

17 ~~— a. For control technology installed before provisions for clean units are effective in~~
18 ~~the Kentucky SIP, the owner or operator of an emissions unit with control technology on~~
19 ~~which a clean unit designation is based, shall apply for clean unit designation within two~~
20 ~~(2) years after the requirements for clean units become effective in the Kentucky SIP.~~

21 ~~— b. For control technology installed after the provisions for clean units become~~
22 ~~effective in the Kentucky SIP, the owner or operator shall apply for clean unit~~
23 ~~designation at the time the control technology is installed.~~

~~(b) Requalifying as a clean unit. An emissions unit may requalify as a clean unit after the original clean unit designation expires or is lost according to provisions in subsections (6) and (7) of this section or under clean unit provisions in Section 20 of this administrative regulation.~~

~~1. The owner or operator shall obtain a new permit or permit revision pursuant to subsections (6) and (7) of this section and 401 KAR 52:020 that demonstrates the emissions unit's control technology is achieving a level of emissions control comparable to current-day BACT.~~

~~2. The emissions unit shall meet the requirements of subsections (2)(a)1 and 2 of this section.~~

~~(3) Demonstrating control effectiveness comparable to BACT. The owner or operator shall demonstrate that the emissions unit's control technology is comparable to BACT under the provisions of either paragraph (a) or (b) of this subsection.~~

~~(a) Comparison of the control technology to previous BACT and LAER determinations.~~

~~1. An emissions unit's control technology shall be presumed to be comparable to BACT if:~~

~~a. The control technology achieves an emissions limitation that is equal to or better than the average of the emissions limitation achieved by all the sources for which a BACT or LAER determination has been made within the preceding five (5) years and entered into the RACT/BACT/LAER Clearinghouse; and~~

~~b. Application of the BACT or LAER control technology to the emissions unit is technically feasible.~~

1 ~~2. To determine the accuracy of any presumptive determination that an achieved-in-~~
2 ~~practice control technology is comparable to BACT, the cabinet shall:~~

3 ~~a. Consider any information on achieved-in-practice pollution control technologies~~
4 ~~that is provided during the public comment period; and~~

5 ~~b. Compare this presumption to any additional BACT or LAER determinations of~~
6 ~~which the cabinet is aware.~~

7 ~~(b) The substantially as effective test. The owner or operator may demonstrate that~~
8 ~~the emissions unit's control technology is substantially as effective as BACT pursuant to~~
9 ~~this paragraph. The cabinet:~~

10 ~~1. Shall consider the evidence on a case-by-case basis that an owner or operator,~~
11 ~~and any other person during the public participation process, provides to the cabinet to~~
12 ~~demonstrate if the emissions unit's control technology is substantially as effective as~~
13 ~~BACT; and~~

14 ~~2. Shall determine if the emissions unit's air pollution control technology is~~
15 ~~substantially as effective as BACT after considering the evidence.~~

16 ~~(c) Time of comparison.~~

17 ~~1. Emissions units with control technologies installed before provisions for clean~~
18 ~~units are effective in the Kentucky SIP. The owner or operator of an emissions unit for~~
19 ~~which control technology is installed before the provisions regarding clean units are~~
20 ~~effective in the Kentucky SIP shall demonstrate to the cabinet that the emissions~~
21 ~~limitation achieved by the emissions unit's control technology is comparable to:~~

22 ~~a. The BACT requirements that applied at the time the control technology was~~
23 ~~installed; or~~

1 ~~— b. The current-day BACT requirements.~~

2 ~~— 2. Emissions units with control technologies installed after provisions for clean units~~
3 ~~are effective in the Kentucky SIP. The owner or operator of an emissions unit for which~~
4 ~~control technology is installed after the provisions regarding clean units are effective in~~
5 ~~the Kentucky SIP shall demonstrate to the cabinet that the emissions limitation achieved~~
6 ~~by the emissions unit's control technology is comparable to current-day BACT~~
7 ~~requirements.~~

8 ~~— (4) Effective date of the clean unit designation. The date that the owner or operator~~
9 ~~may begin to use the clean unit test to determine if a project involving an emissions unit~~
10 ~~is a major modification shall be the later of:~~

11 ~~— (a) The date that the permit or permit revision required by subsection (6) of this~~
12 ~~section is issued; or~~

13 ~~— (b) The date that the emissions unit's air pollution control technology is placed into~~
14 ~~service.~~

15 ~~— (5) Clean unit expiration. The date the owner or operator shall no longer be allowed~~
16 ~~to use the clean unit test to determine if a project involving an emissions unit is, or is~~
17 ~~part of, a major modification shall be determined according to this subsection.~~

18 ~~— (a) For an emissions unit with a clean unit designation based on a demonstration by~~
19 ~~the owner or operator that the emissions unit's control technology is comparable to the~~
20 ~~BACT requirements that applied at the time the control technology was installed, the~~
21 ~~clean unit designation shall expire ten (10) years from the date the unit's control~~
22 ~~technology was installed.~~

23 ~~— (b) For all other emissions units, the clean unit designation shall expire ten (10)~~

1 years from the effective date of the clean unit designation.

2 ~~—(c) The clean unit designation shall expire at any time the owner or operator fails to~~
3 ~~comply with the provisions for maintaining the clean unit designation according to~~
4 ~~subsection (8) of this section.~~

5 ~~—(6) Procedures for designating emissions units as clean units.~~

6 ~~—(a) The cabinet shall designate an emissions unit a clean unit by issuing a permit or~~
7 ~~permit revision under 401 KAR Chapter 52, including requirements for public notice of~~
8 ~~the proposed clean unit designation and opportunity for public comment; and~~

9 ~~—(b) The permit or permit revision shall meet the requirements of subsection (7) of this~~
10 ~~section.~~

11 ~~—(7) Required permit content. The Title V permit for a major stationary source with a~~
12 ~~clean unit shall, after the effective date of the clean unit designation and in accordance~~
13 ~~with the applicable provisions of 401 KAR Chapter 52, but not later than the date the~~
14 ~~Title V permit is renewed, include the following terms and conditions:~~

15 ~~—(a) A statement indicating that the emissions unit qualifies as a clean unit and~~
16 ~~identifying the pollutant for which the clean unit designation applies;~~

17 ~~—(b) The effective date of clean unit designation.~~

18 ~~—1. If the effective date is not known on the date the clean unit designation is initially~~
19 ~~recorded in the Title V permit, the permit or permit revisions shall describe the event~~
20 ~~that shall determine the effective date. Once the effective date is determined, the owner~~
21 ~~or operator shall notify the cabinet of the exact date; and~~

22 ~~—2. If originally absent from the Title V permit, the effective date of the clean unit shall~~
23 ~~be added to the Title V permit at the first opportunity the permit is opened, but not later~~

1 ~~than the next renewal;~~

2 ~~—(c) The expiration date of clean unit designation:~~

3 ~~— 1. If the expiration date is not known on the date the clean unit designation is initially~~
4 ~~recorded in the Title V permit, the permit or permit revision shall describe the event that~~
5 ~~shall determine the expiration date;~~

6 ~~— 2. Once the expiration date is determined, the owner or operator shall notify the~~
7 ~~cabinet of the exact date; and~~

8 ~~— 3. If originally absent from the Title V permit, the expiration date shall be added to~~
9 ~~the Title V permit at the first opportunity the permit is opened, but not later than the next~~
10 ~~renewal;~~

11 ~~—(d) All emissions limitations and work practice requirements adopted in conjunction~~
12 ~~with emissions limitations necessary to assure the control technology continues to~~
13 ~~achieve an emissions limitation comparable to BACT and any physical or operational~~
14 ~~characteristics that formed the basis for determining that the emissions unit's control~~
15 ~~technology achieves a level of emissions control comparable to BACT;~~

16 ~~—(e) Monitoring, recordkeeping, and reporting requirements as necessary to~~
17 ~~demonstrate that the emissions unit continues to meet the criteria for maintaining the~~
18 ~~clean unit designation pursuant to subsection (8) of this section; and~~

19 ~~—(f) Terms reflecting the owner or operator's duty to maintain the clean unit~~
20 ~~designation and the consequences of failing to do so, pursuant to subsection (8) of this~~
21 ~~section.~~

22 ~~—(8) Maintaining the clean unit designation.~~

23 ~~—(a) The owner or operator shall conform to the provisions of this subsection to~~

1 ~~maintain clean unit status.~~

2 ~~— 1. To ensure that the control technology continues to achieve emissions control~~
3 ~~comparable to BACT, the clean unit shall comply with the emissions limitations or work~~
4 ~~practice requirements adopted in conjunction with those that are comparable to BACT,~~
5 ~~which are recorded in the source's major NSR permit or permit revisions and~~
6 ~~subsequently reflected in the Title V permit that designates the unit as a clean unit.~~

7 ~~— 2. The owner or operator shall not make a physical change in or change in the~~
8 ~~method of operation of the clean unit that causes the emissions unit to function in a~~
9 ~~manner that is inconsistent with the physical or operational characteristics that formed~~
10 ~~the basis for the determination that the control technology is achieving a level of~~
11 ~~emissions control that is comparable to BACT.~~

12 ~~— 3. The clean unit shall comply with all terms and conditions in the Title V permit~~
13 ~~related to the unit's clean unit designation.~~

14 ~~— 4. The clean unit shall continue to control emissions using the specific air pollution~~
15 ~~control technology that was the basis for its clean unit designation. The clean unit~~
16 ~~designation shall end if the emissions unit or control technology is replaced.~~

17 ~~— (b) The requirements of this subsection shall apply to each pollutant for which the~~
18 ~~cabinet has designated an emissions unit a clean unit. Failing to conform to the~~
19 ~~restrictions for one (1) pollutant shall only affect the clean unit designation for that~~
20 ~~pollutant.~~

21 ~~— (9) Netting at clean units.~~

22 ~~— (a) Emissions changes that occur at a clean unit shall not be included in calculating~~
23 ~~a significant net emissions increase to be used in a netting analysis, unless:~~

1 ~~1. Such use occurs before the date the clean unit provisions are effective in the~~
2 ~~Kentucky SIP or after the clean unit designation expires; or~~
3 ~~2. The emissions unit reduces emissions below the level that qualified the unit as a~~
4 ~~clean unit.~~
5 ~~(b) The owner or operator may generate a credit for the difference between the level~~
6 ~~that qualified the unit as a clean unit and the new emissions limitation, if:~~
7 ~~1. The unit reduces emissions below the level that qualified the unit as a clean unit;~~
8 ~~and~~
9 ~~2. The reductions are surplus, quantifiable, and permanent.~~
10 ~~(c) For generating offsets, reductions shall also be federally enforceable.~~
11 ~~(d) For determining creditable net emissions increases and decreases, the~~
12 ~~reductions shall also be enforceable as a practical matter.~~
13 ~~(10) Effect of area redesignation on clean units.~~
14 ~~(a) The clean unit designation of an emissions unit shall not be affected by~~
15 ~~redesignation of the attainment status of the area in which it is located.~~
16 ~~(b) If an existing clean unit designation expires or is lost, the unit shall requalify as a~~
17 ~~clean unit according to the requirements that are currently applicable in the area,~~
18 ~~regardless of the area's original attainment status during the previous designation~~
19 ~~period.~~
20 ~~Section 22. PCP Exclusion Procedural Requirements. For a project to qualify for a~~
21 ~~pollution control project (PCP) exclusion, an owner or operator shall comply with the~~
22 ~~provisions of this section.~~
23 ~~(1) To request a PCP designation for a project the owner or operator shall:~~

1 ~~—(a) Submit a notice to the cabinet before beginning actual construction for a project~~
2 ~~that is listed in the definition for "pollution control project" in 401 KAR 51:001, Section~~
3 ~~1(188)(a) to (f); or~~

4 ~~—(b) Submit an application for a permit or permit revision and obtain approval to use~~
5 ~~the PCP exclusion from the cabinet according to subsection (5) of this section for a~~
6 ~~project that is not listed in the definition at 401 KAR 51:001, Section 1(188)(a) to (f).~~

7 ~~—(2) The owner or operator for all projects that rely on the PCP exclusion shall~~
8 ~~perform:~~

9 ~~—(a) An environmentally beneficial analysis.~~

10 ~~—1. The environmental benefit from the emissions reductions of pollutants regulated~~
11 ~~under 42 U.S.C. 7401 to 7671q (Clean Air Act) shall outweigh the environmental~~
12 ~~detriment of emissions increases in pollutants regulated under the Act; and~~

13 ~~—2. A statement that the project is implementing a technology from those listed in 401~~
14 ~~KAR 51:001, Section 1(188)(a) to (f) shall satisfy the requirement in subparagraph 1 of~~
15 ~~this paragraph.~~

16 ~~—(b) An air quality analysis. The emissions increases from the project shall not:~~

17 ~~—1. Cause or contribute to a violation of any national ambient air quality standard or~~
18 ~~PSD increment; or~~

19 ~~—2. Adversely impact visibility or another air quality related value that has been~~
20 ~~identified for a federal Class I area by a federal land manager and for which information~~
21 ~~is available to the general public.~~

22 ~~—(3) Content of notice or application for a permit or permit revision. The owner or~~
23 ~~operator shall include the following information in the notice or application for a permit or~~

1 ~~permit revision submitted to the cabinet for a PCP:~~

2 ~~—(a) A description of the project;~~

3 ~~—(b) The potential emissions increases and decreases of any pollutant regulated~~
4 ~~under the Act and the projected emissions increases and decreases using the~~
5 ~~methodology in Section 1(4) of this administrative regulation that will result from the~~
6 ~~project;~~

7 ~~—(c) A copy of the environmentally-beneficial analysis required by subsection (2)(a) of~~
8 ~~this section;~~

9 ~~—(d) A description of all methods, including monitoring and recordkeeping, that shall~~
10 ~~be used on an ongoing basis to demonstrate that the project is environmentally~~
11 ~~beneficial and sufficient to meet the applicable requirements of 401 KAR Chapter 52;~~

12 ~~—(e) A certification that the project shall be designed and operated in a manner that is~~
13 ~~consistent with:~~

14 ~~—1. The proper industry and engineering practices;~~

15 ~~—2. The environmentally-beneficial analysis and air quality analysis required by~~
16 ~~subsection (2)(a) and (b) of this section;~~

17 ~~—3. The information submitted in the notice or permit application; and~~

18 ~~—4. Procedures that minimize emissions of collateral pollutants within the physical~~
19 ~~configuration and operational standards usually associated with the emissions control~~
20 ~~device or strategy; and~~

21 ~~—(f) Demonstration that the PCP shall not have an adverse air quality impact.~~

22 ~~—1. The demonstration requirement may be satisfied with modeling, screening level~~
23 ~~modeling results, a statement that the collateral emissions increase is included within~~

~~the parameters used in the most recent modeling exercise as required by subsection (2)(b) of this section, or another method approved by the cabinet; and~~

~~2. An air quality impact analysis shall not be required for any pollutant that will not experience a significant emissions increase from the project.~~

~~(4) Notice process for listed projects. The owner or operator:~~

~~(a) May begin actual construction of a PCP project immediately after notice is sent to the cabinet for projects listed in the definition of "pollution control project" in 401 KAR 51:001, Section 1(188)(a) to (f); and~~

~~(b) Shall respond to any requests by the cabinet for additional information necessary to evaluate the suitability of the project for a PCP exclusion.~~

~~(5) Permitting process for unlisted projects.~~

~~(a) The owner or operator shall not begin actual construction of a PCP that is not listed in 401 KAR 51:001, Section 1(188)(a) to (f) until the cabinet approves and issues a permit or permit revision for the project consistent with 40 C.F.R. 51.160 and 51.161.~~

~~These procedures shall include the cabinet providing the public with:~~

~~1. Notice of the proposed approval;~~

~~2. Access to the environmentally beneficial analysis and the air quality analysis; and~~

~~3. At least a thirty (30) day period for the public and the U.S. EPA to submit comments.~~

~~(b) The cabinet shall address all material comments received by the end of the comment period before taking final action on the permit or permit revision.~~

~~(6) Operational requirements. Upon installation of a PCP, the owner or operator shall comply with the requirements of this subsection.~~

1 ~~—(a) General duty. The owner or operator shall operate the PCP in a manner that is~~
2 ~~consistent with:~~

3 ~~—1. Proper industry and engineering practices;~~

4 ~~—2. The environmentally beneficial analysis and air quality analysis required by~~
5 ~~subsection (2)(a) and (b) of this section;~~

6 ~~—3. Information submitted in the notice or application for a permit or permit revision~~
7 ~~required by subsection (3) of this section; and~~

8 ~~—4. Procedures that minimize emissions of collateral pollutants within the physical~~
9 ~~configuration and operational standards usually associated with the emissions control~~
10 ~~device or strategy.~~

11 ~~—(b) Recordkeeping to prove that the PCP is operated consistent with the general~~
12 ~~duty requirements in paragraph (a) of this subsection, the owner or operator shall~~
13 ~~maintain copies on site, of:~~

14 ~~—1. The environmentally beneficial analysis;~~

15 ~~—2. The air quality impacts analysis; and,~~

16 ~~—3. The monitoring and other emissions records.~~

17 ~~—(c) Permit requirements. The owner or operator shall comply with all provisions in a~~
18 ~~permit issued under 401 KAR 52:020 related to use and approval of the PCP exclusion.~~

19 ~~—(d) Generation of emissions reduction credits.~~

20 ~~—1. Emissions reductions created by a PCP shall not be included in calculating a~~
21 ~~significant net emissions increase unless the emissions unit further reduces emissions~~
22 ~~after qualifying for the PCP exclusion;~~

23 ~~—2. The owner or operator may generate a credit for the difference between the level~~

1 ~~of reduction that was used to qualify for the PCP exclusion and the new emissions~~
2 ~~limitation if such reductions are surplus, quantifiable, and permanent;~~

3 ~~— 3. For generating offsets, the reductions shall be federally enforceable; and~~

4 ~~— 4. For determining creditable net emissions increases and decreases, the reductions~~
5 ~~shall also be enforceable as a practical matter.]~~

6 Section 20.~~[23.]~~ Plant-wide Applicability Limit Provisions. The cabinet may approve
7 the use of an actuals PAL (PAL) for an existing major stationary source if the PAL
8 meets the requirements of this section.

9 (1) General provisions.

10 (a) An owner or operator may execute a project without triggering major NSR, if the
11 source maintains its total source-wide emissions below the PAL level, meets the
12 requirements in this section, and complies with the PAL permit. If these conditions are
13 met, a project:

14 1. Shall not be considered a major modification for the PAL pollutant;

15 2. Shall not have to be approved through Kentucky's major NSR program; and

16 3. Shall not be subject to the provisions of Section 16(4) of this administrative
17 regulation concerning restrictions on relaxing enforceable emission limitations that a
18 major stationary source used to avoid applicability of the major NSR program.

19 (b) Except as provided under subparagraph (1)(a)3 of this section, a major stationary
20 source shall continue to comply with all applicable federal or state requirements,
21 emissions limitations, and work practice requirements that were established prior to the
22 effective date of the PAL.

23 (2) Permit application requirements. The owner or operator of a major stationary

1 source shall submit the following information to the cabinet for approval as part of an
2 application for a permit or permit revision requesting a PAL:

3 (a) A list of all emissions units at the source designated as small, significant, or
4 ~~[significant or]~~ major, based on their potential to emit;

5 (b) Identification of the federal and state applicable requirements, emissions
6 limitations, and work practice requirements that apply to each emissions unit;

7 (c) Calculations of the baseline actual emissions for the emissions units with
8 supporting documentation, including emissions associated with startup, shutdown, and
9 ~~[shutdown and]~~ malfunction; and

10 (d) The calculation procedures the owner or operator proposes to use to convert the
11 monitoring system data to monthly emissions and annual emissions based on a twelve
12 (12) month rolling total for each month as required by subsection (12)(a) of this section.

13 (3) Establishing a PAL. The cabinet shall establish a PAL at a major stationary
14 source in a federally enforceable permit pursuant to the requirements of this section.

15 (a) The PAL shall impose an annual emissions limitation in tons per year that is
16 enforceable as a practical matter for the entire major stationary source.

17 1. For each month during the PAL effective period after the first twelve (12) months
18 of establishing a PAL, the owner or operator shall demonstrate ~~[show]~~ that the sum of
19 the monthly emissions from each emissions unit under the PAL for the previous twelve
20 (12) consecutive months is less than the PAL as a twelve (12) month average, rolled
21 monthly; and

22 2. For each month during the first eleven (11) months from the PAL effective date,
23 the owner or operator shall demonstrate ~~[show]~~ that the sum of the preceding monthly

1 emissions from the PAL effective date for each emissions unit under the PAL is less
2 than the PAL.

3 (b) The PAL shall be established in a PAL permit that:

4 1. Meets the public participation requirements in subsection (4) of this section; and

5 2. Contains all the requirements of subsection (6) of this section. [~~section;~~]

6 (c) A PAL shall include fugitive emissions, to the extent quantifiable, from all
7 emissions units that emit or have the potential to emit the PAL pollutant at the major
8 stationary source. [~~source;~~]

9 (d) Each PAL shall regulate emissions of only one (1) pollutant. [~~pollutant;~~]

10 (e) Each PAL shall have a PAL effective period of ten (10) years. [~~years;~~]

11 (f) The owner or operator of a major stationary source with a PAL shall comply with
12 the monitoring, recordkeeping, and reporting requirements of subsections (11) to (13) of
13 this section for each emissions unit under the PAL through the PAL effective period.
14 [~~period;~~]

15 (g) Emissions reductions of a PAL pollutant that occur during the PAL effective
16 period shall not be creditable as decreases for offsets under 40 C.F.R. 51.165(a)(3)(ii),
17 unless:

18 1. The level of the PAL is reduced by the amount of the emissions reductions; and

19 2. The reductions will be creditable in the absence of the PAL.

20 (4) Public participation requirements. PALs for existing major stationary sources
21 shall be established, renewed, or increased pursuant to this subsection and the
22 applicable procedures of 401 KAR 52:100. The cabinet shall:

23 (a) Provide the public with notice of the proposed approval of a PAL permit with at

1 least a thirty (30) day period for submittal of public comment; and

2 (b) Address all material comments before taking final action on a PAL permit or
3 permit revision.

4 (5) Setting the ten (10) year PAL level.

5 (a) The PAL level for a major stationary source shall be the sum of the baseline
6 actual emissions of the PAL pollutant for each emissions unit at the source during the
7 chosen twenty-four (24) month period plus the applicable significant level for the PAL
8 pollutant under the definition for "significant" in 401 KAR 51:001, Section 1[(224)] or
9 under 42 U.S.C. 7401-7671g, [the Act,] whichever is lower.

10 (b) In establishing a PAL level for a PAL pollutant, only one (1) consecutive twenty-
11 four (24) month period shall be used to determine the baseline actual emissions for all
12 existing emissions units.

13 (c) A different consecutive twenty-four (24) month period may be used for each
14 different PAL pollutant.

15 (d) Emissions associated with units that were permanently shutdown after the
16 chosen twenty-four (24) month period shall be subtracted from the PAL level.

17 (e) Emissions from units for which actual construction began after the twenty-four
18 (24) month period shall be added to the PAL level in an amount equal to the potential to
19 emit of the units.

20 (f) The cabinet shall specify a reduced PAL level in the PAL permit to become
21 effective on the future compliance date of any applicable federal or state regulatory
22 requirement that the cabinet is aware of prior to issuance of the PAL permit.

23 (6) Contents of the PAL permit. The PAL permit shall contain the following

1 information:

2 (a) The PAL pollutant and the applicable source-wide emissions limitation in tons per
3 year;

4 (b) The PAL permit effective date and the expiration date of the PAL or PAL effective
5 period;

6 (c) Specification in the PAL permit that if a major stationary source owner or operator
7 applies to renew a PAL under subsection (9) of this section before the end of the PAL
8 effective period, the PAL shall remain in effect until a revised PAL permit is issued by
9 the cabinet;

10 (d) A requirement that emissions calculations for compliance purposes include
11 emissions from startups, shutdowns, and ~~[shutdowns and]~~ malfunctions;

12 (e) A requirement that, once the PAL expires, the major stationary source shall be
13 ~~[is]~~ subject to the requirements of subsection (8) of this section;

14 (f) The calculation procedures that the major stationary source owner or operator
15 shall use to convert the monitoring system data to monthly emissions and annual
16 emissions based on a twelve (12) month rolling total for each month as required by
17 subsection (12)(a) of this section;

18 (g) A requirement that the major stationary source owner or operator shall monitor all
19 emissions units in accordance with the provisions in subsection (12) of this section;

20 (h) A requirement that the owner or operator shall retain the records required under
21 subsection (12) of this section on site. Records may be retained in an electronic format
22 or other generally-acceptable ~~[another-acceptable]~~ format approved by the cabinet;

23 (i) A requirement for the owner or operator to submit the reports required under

1 subsection (13) of this section by the required deadlines; and

2 (j) Any ~~Other~~ requirements necessary to implement and enforce the PAL.

3 (7) PAL effective period and reopening of a PAL permit.

4 (a) A PAL effective period shall be ten (10) years.

5 (b) The cabinet shall reopen a PAL permit to:

6 1. Correct typographical or calculation errors made in setting the PAL;

7 2. Reflect a more accurate determination of emissions used to establish the PAL;

8 3. Reduce the PAL if the owner or operator of the major stationary source creates
9 creditable emissions reductions for use as offsets under 40 C.F.R. 51.165(a)(3)(ii); or

10 4. Revise the PAL to reflect an increase in the PAL according to subsection (10) of
11 this section.

12 (c) The cabinet may reopen the PAL permit, during the PAL effective period, to:

13 1. Reduce the PAL to reflect newly applicable federal requirements with compliance
14 dates after the PAL effective date;

15 2. Reduce the PAL consistent with any ~~other~~ requirement ~~[that-is]~~ enforceable as a
16 practical matter and imposed on the major stationary source under the SIP; and

17 3. Reduce the PAL if the cabinet determines that a reduction is necessary to avoid
18 causing or contributing to:

19 a. A National Ambient Air Quality Standard (NAAQS) or PSD increment violation; or

20 b. An adverse impact on visibility or another air quality related value that has been
21 identified for a federal Class I area by a federal land manager and for which information
22 is available to the general public.

23 (d) All permit reopenings shall be carried out under the public participation

1 requirements of subsection (4) of this section except for permit reopenings to correct
2 typographical or calculation of errors that do not increase the PAL level.

3 (8) Expiration of a PAL. A PAL that is not renewed shall expire at the end of the PAL
4 effective period, and ~~[period and]~~ the requirements of this subsection shall then apply.

5 (a) Each emissions unit, or each group of emissions units, that existed under the
6 PAL shall comply with an allowable emissions limitations under a revised permit
7 established as follows:

8 1. An owner or operator of a major stationary source using a PAL shall submit a
9 proposed allowable emissions limitation for each emissions unit, or each group of
10 emissions units, by distributing the PAL allowable emissions for the major stationary
11 source among each of the emissions units that existed under the PAL.

12 a. This proposal shall be submitted to the cabinet at least six (6) months before the
13 expiration of the PAL permit but not sooner than eighteen (18) months before permit
14 expiration.

15 b. If the PAL has not yet been adjusted for an applicable requirement that became
16 effective during the PAL effective period, as required under subsection (9)(e) of this
17 section, distribution of allowable emissions shall be made as if the PAL has been
18 adjusted.

19 2. The cabinet shall decide the date and procedure the owner or operator shall use
20 to distribute the PAL allowable emissions.

21 3. The cabinet shall issue a revised permit incorporating allowable limits for each
22 emissions unit, or each group of emissions units, as the cabinet determines is
23 appropriate.

1 (b) Each emissions unit shall comply with the allowable emissions limitation on a
2 twelve (12) month rolling basis. The cabinet may approve the use of monitoring systems
3 other than CEMS, CERMS, PEMS, or ~~[PEMS or]~~ CPMS to demonstrate compliance
4 with the allowable emissions limitation.

5 (c) The source shall continue to comply with a source-wide, multiunit emissions cap
6 equivalent to the level of the PAL emissions limitation until the cabinet issues the
7 revised permit incorporating allowable limits for each emissions unit or each group of
8 emissions units.

9 (d) A major modification at the major stationary source shall be subject to major NSR
10 requirements.

11 (e) The major stationary source owner or operator shall continue to comply with any
12 state or federal applicable requirements eliminated by the PAL that applied during or
13 before the PAL effective period, except for those emissions limitations established
14 pursuant to Section 16(4) of this administrative regulation.

15 (9) Renewal of a PAL.

16 (a) Public participation requirements.

17 1. The cabinet shall follow the public participation procedures specified in subsection
18 (4) of this section in approving a request to renew a PAL for a major stationary source.

19 2. The cabinet shall provide a written rationale for the proposed PAL level for public
20 review and comment.

21 3. Any person may propose a PAL level for the source for consideration by the
22 cabinet during the public review period.

23 (b) Application deadline.

1 1. A major stationary source owner or operator shall submit an application for
2 renewal of a PAL at least six (6) months before the date of permit expiration but not
3 earlier than eighteen (18) months before permit expiration.

4 2. The deadline for application submittal shall ensure that the permit shall not expire
5 before the permit is renewed.

6 3. If a complete application for renewal is submitted within the timeframe specified in
7 subparagraph 1 of this paragraph, the PAL shall continue to be effective until the
8 revised permit with the renewed PAL is issued.

9 (c) Application requirements. The application to renew a PAL permit shall contain:

10 1. The information required in subsection (2) of this section;

11 2. A proposed PAL level;

12 3. The sum of the potential to emit of all emissions units under the PAL with
13 supporting documentation; and

14 4. Any other information the owner or operator wishes the cabinet to consider in
15 determining the appropriate level to renew the PAL.

16 (d) PAL adjustment.

17 1. A PAL shall not exceed the source's potential to emit. The cabinet shall adjust the
18 PAL downward if a source's potential to emit has declined below the PAL level.

19 2. The cabinet may renew the PAL at the same level as the current PAL if the sum of
20 the baseline actual emissions for all emissions units at the source plus an amount equal
21 to the significant level is equal to or greater than eighty (80) percent of the current PAL
22 level, unless the sum is greater than the source's potential to emit.

23 3. If the sum of the baseline actual emissions for all emissions units at the source

1 plus an amount equal to the significant level is less than eighty (80) percent of the
2 current PAL level, the cabinet may set the PAL at a level that is determined to be:

3 a. More representative of the source's baseline actual emissions; or

4 b. Appropriate considering the following factors:

5 (i) Air quality needs;

6 (ii) Advances in control technology;

7 (iii) Anticipated economic growth in the area of the source;

8 (iv) The cabinet's goal of promoting voluntary emissions reductions;

9 (v) Cost effective emissions control alternatives; and

10 (vi) Other factors as specifically identified by the cabinet in its written rationale for
11 setting the PAL level.

12 4. The cabinet shall not approve a renewed PAL level higher than the current PAL,
13 unless the major stationary source has complied with the provisions of subsection (10)
14 of this section.

15 (e) The PAL shall be adjusted in conjunction with ~~[at the time of]~~ PAL permit renewal
16 or Title V permit renewal, whichever comes first, if:

17 1. The compliance date for a state or federal applicable requirement that applies to
18 the PAL source occurs during the PAL effective period; and

19 2. The cabinet has not already adjusted for the [such] requirement.

20 (10) Increasing a PAL during the PAL effective period. The cabinet may increase a
21 PAL emissions limitation during the PAL effective period if the major stationary source
22 complies with the provisions of this subsection.

23 (a) Application procedures. To request an increase in the PAL limit for a PAL major

1 modification, the owner or operator of the major stationary source shall submit a
2 complete application, which shall include:

3 1. Identification of the emissions units contributing to the increase in emissions that
4 cause the source's emissions to equal or exceed its PAL;

5 2. Demonstration that the increased PAL, as calculated in paragraph (c) of this
6 subsection, exceeds the PAL; and

7 a. The level of control that results from BACT equivalent controls on each significant
8 or major emissions unit shall be determined by conducting a new BACT analysis with
9 the application submittal, ~~[at the time the application is submitted,]~~ unless the emissions
10 unit is currently required to comply with a BACT or LAER requirement that was
11 established within the preceding ten (10) years;

12 b. If an emissions unit currently complies with BACT or LAER, the assumed control
13 level for that emissions unit shall be equal to the current level of BACT or LAER for that
14 emissions unit; and

15 3. A statement that the increased PAL level shall be effective on the day any
16 emissions unit that is part of the PAL major modification becomes operational and
17 begins to emit the PAL pollutant.

18 (b) NSR permit and compliance requirement. The owner or operator shall obtain a
19 major NSR permit for all emissions units contributing to the increase in emissions for the
20 PAL major modification.

21 1. A significant level shall not apply in deciding for which emissions units a major
22 NSR permit shall be obtained; and

23 2. Emissions units that obtain a major NSR permit shall comply with any emissions

1 requirements resulting from the major NSR process, even though the units shall also
2 become subject to the PAL or shall continue to be subject to the PAL.

3 (c) Calculation of increased PAL. The cabinet shall calculate the new PAL as the
4 sum of the allowable emissions for each modified or new emissions unit, plus the sum
5 of the baseline actual emissions of the significant and major emissions units assuming
6 application of BACT equivalent controls, plus the sum of the baseline actual emissions
7 of the small emissions units.

8 (d) Public notice requirement. The public notice requirements of subsection (4) of
9 this section shall be followed during PAL permit revision for an increased PAL level.

10 (11) Monitoring requirements for PALs.

11 (a) General requirements.

12 1. Each PAL permit shall contain enforceable requirements for the chosen
13 monitoring system that accurately determines plant-wide emissions of the PAL pollutant
14 in terms of mass per unit of time;

15 2. A monitoring system authorized for use in the PAL permit shall be:

16 a. Approved by the cabinet pursuant to this subsection; [cabinet;] and

17 b. Based on sound science and meet generally acceptable scientific procedures for
18 data quality and manipulation;

19 3. The data generated by a monitoring system shall meet minimum legal
20 requirements for admissibility in a judicial proceeding to enforce the PAL permit;

21 4. The PAL monitoring system shall employ one (1) or more of the four (4) general
22 monitoring approaches meeting the minimum requirements set forth in paragraph (b) of
23 this subsection;

1 5. The cabinet may approve an alternative monitoring approach that meets the
2 requirements of subparagraphs 1 to 3 of this paragraph; and

3 6. Failure to use a monitoring system that meets the requirements of this section
4 shall render the PAL invalid.

5 (b) Minimum performance requirements for approved monitoring approaches. If
6 conducted in accordance with the minimum requirements in paragraphs (c) to (i) of this
7 subsection, the following shall be acceptable monitoring approaches:

8 1. Mass balance calculations for activities using coatings or solvents;

9 2. CEMS;

10 3. CPMS or PEMS; and

11 4. Emission factors.

12 (c) Mass balance calculations. An owner or operator using mass balance
13 calculations to monitor PAL pollutant emissions from activities using coatings or
14 solvents shall:

15 1. Provide a demonstrated means of validating the published content of the PAL
16 pollutant [~~that is~~] contained in or created by all materials used in or at the emissions
17 unit;

18 2. If the PAL pollutant cannot be accounted for in the process, assume that the
19 emissions unit emits all of the PAL pollutant [~~that is~~] contained in or created by any raw
20 material or fuel used in or at the emissions unit; and

21 3. If the vendor of the material or fuel from which the pollutant originates publishes a
22 range, use the highest value of the published range of pollutant content to calculate the
23 PAL pollutant emissions, unless the cabinet determines there is site-specific data or a

1 site-specific monitoring program to support another pollutant content within the range.

2 (d) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions
3 shall meet the following requirements:

4 1. CEMS shall comply with applicable performance specifications found in 40 C.F.R.
5 Part 60, Appendix B; and

6 2. CEMS shall sample, analyze, and record data at least every fifteen (15) minutes
7 while the emissions unit is operating.

8 (e) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL
9 pollutant emissions shall meet the following requirements:

10 1. The CPMS or the PEMS shall be based on current site-specific data
11 demonstrating a correlation between the monitored parameter and the PAL pollutant
12 emissions across the range of operation of the emissions unit; and

13 2. While the unit is operating, each CPMS or PEMS shall sample, analyze, and
14 record data at least every fifteen (15) minutes, or at another less frequent interval
15 approved by the cabinet.

16 (f) Emission factors. An owner or operator using emission factors to monitor PAL
17 pollutant emissions shall meet the following requirements:

18 1. All emission factors shall be adjusted, if appropriate, to account for the degree of
19 uncertainty or limitations in the factors' development;

20 2. The emissions unit shall operate within the designated range of use for the
21 emission factor, if applicable; and

22 3. If technically practicable, the owner or operator of a significant emissions unit that
23 relies on an emission factor to calculate PAL pollutant emissions shall conduct

1 validation testing to determine a site-specific emission factor within six (6) months of
2 PAL permit issuance, unless the cabinet determines that testing is not required.

3 (g) A source owner or operator shall record and report maximum potential emissions
4 without considering enforceable emissions limitations or operational restrictions for an
5 emissions unit during any period of time there is no monitoring data, unless another
6 method for determining emissions during such periods is specified in the PAL permit.

7 (h) If an owner or operator of an emissions unit cannot demonstrate a correlation
8 between the monitored parameters and the PAL pollutant emissions rate at all operating
9 points of the emissions unit, as an alternative to the requirements of paragraphs (c) to
10 (g) of this subsection, in conjunction with ~~[at the time of]~~ permit issuance the cabinet
11 shall:

12 1. Establish default values for determining compliance with the PAL based on the
13 highest potential emissions reasonably estimated at operating points; or

14 2. Determine that operation of the emissions unit during operating conditions if
15 ~~[when]~~ there is not a ~~[no]~~ correlation between monitored parameters and the PAL
16 pollutant emissions is a violation of the PAL.

17 (i) Revalidation. All data used to establish the PAL pollutant shall be revalidated
18 through performance testing or other scientifically-valid means approved by the cabinet.
19 Validation testing shall occur at least once every five (5) years after issuance of the
20 PAL.

21 (12) Recordkeeping requirements.

22 (a) The PAL permit shall require an owner or operator to retain a copy of all records
23 necessary to determine compliance with any requirement of this section and of the PAL,

1 including a determination of each emissions unit's twelve (12) month rolling total
2 emissions for five (5) years from the date of the determination.

3 (b) The PAL permit shall require an owner or operator to retain a copy of the
4 following records for the duration of the PAL effective period plus five (5) years:

5 1. A copy of the PAL permit application and any applications for revisions to the
6 PAL; and

7 2. Each annual certification of compliance pursuant to Title V and the data used to
8 certify compliance.

9 (13) Reporting and notification requirements. The owner or operator shall submit
10 semiannual monitoring reports and prompt deviation reports to the cabinet in
11 accordance with 401 KAR Chapter 52 that meet the following requirements:

12 (a) Semiannual report. The semiannual report shall be submitted to the cabinet
13 within thirty (30) days of the end of each reporting period and shall contain:

14 1. The identification of owner and operator and the permit number;

15 2. Total annual emissions, in tpy, based on a twelve (12) month rolling total for each
16 month in the reporting period recorded pursuant to subsection (12)(a) of this section;

17 3. All data used in calculating the monthly and annual PAL pollutant emissions,
18 including any quality assurance or quality control data;

19 4. A list of any emissions units modified or added to the major stationary source
20 during the preceding six (6) month period;

21 5. The number, duration, and cause of any deviations or monitoring malfunctions,
22 other than the time associated with zero and span calibration checks, and any
23 corrective action following a deviation;

1 6. A notification of permanent or temporary shutdown of any monitoring system
2 including:

3 a. The reason for the shutdown;

4 b. The anticipated date that the monitoring system shall be fully operational or shall
5 be replaced with another monitoring system;

6 c. If applicable, a statement that the emissions unit monitored by the monitoring
7 system continued to operate without the monitoring system; and

8 d. The calculation of the emissions of the pollutant or the number determined
9 according to subsection (11)(g) of this section that is included in the permit; and

10 7. A signed statement by the responsible official, as defined by 401 KAR 51:001,
11 Section 1(210), ~~[52:004]~~ certifying the truth, accuracy, and completeness of the
12 information provided in the semiannual report.

13 (b) Deviation report. The major stationary source owner or operator shall submit
14 reports of any deviation or exceedance of the PAL requirements, including periods
15 monitoring is unavailable.

16 1. A report submitted pursuant to 40 C.F.R. 70.6(a)(3)(iii)(B) shall satisfy the
17 deviation reporting requirement;

18 2. The deviation report shall be submitted within the time limits prescribed by 40
19 C.F.R. 70.6(a)(3)(iii)(B);

20 3. The deviation report shall contain the following information:

21 a. The identification of the owner, the operator, and ~~[operator and]~~ the permit
22 number;

23 b. The PAL requirement that experienced the deviation or that was exceeded;

1 c. Emissions resulting from the deviation or the exceedance; and

2 d. A signed statement by the responsible official, as defined by 401 KAR 51:001,
3 Section 1(210), ~~[52:004,]~~ certifying the truth, accuracy, and completeness of the
4 information provided in the report.

5 (c) Revalidation results. The owner or operator shall submit to the cabinet the results
6 of any revalidation test or method within three (3) months after completion of the test or
7 method.

8 (14) Transition requirements.

9 (a) After the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions
10 published in 67 Fed. Reg. 80186, December 31, 2002, the cabinet shall only issue a
11 PAL that complies with the requirements of this section.

12 (b) The cabinet may supersede a PAL that was established before August 10, 2006,
13 ~~[the date the U.S. EPA approves the Kentucky SIP revisions for the PAL provisions~~
14 ~~published in 67 Fed. Reg. 80186, December 31, 2002,]~~ with a PAL that complies with
15 the requirements of this administrative regulation. ~~[section.~~

16 ~~Section 24. Incorporation by Reference. (1) The following material is incorporated~~
17 ~~by reference:~~

18 ~~(a) "40 C.F.R. Part 51, Appendix W to Part 51 Guideline on Air Quality Models, as~~
19 ~~published in the Code of Federal Regulations, July 1, 2003".~~

20 ~~(b) "40 C.F.R. Part 58, Appendix B to Part 58 Quality Assurance Requirements for~~
21 ~~Prevention of Significant Deterioration (PSD) Air Monitoring, as published in the Code of~~
22 ~~Federal Regulations, July 1, 2003".~~

23 ~~(c) "40 C.F.R. Part 60, Appendix B to Part 60 Performance Specifications, as~~

published in the Code of Federal Regulations, July 1, 2003".

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the following main and regional offices of the Kentucky Division for Air Quality during the normal working hours of 8 a.m. to 4:30 p.m., local time:~~

~~(a) Kentucky Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601-4403, (502) 573-3382;~~

~~(b) Ashland Regional Office, 1550 Wolohan Drive, Suite 1, Ashland, Kentucky 41102, (606) 929-5285;~~

~~(c) Bowling Green Regional Office, 1508 Westen Avenue, Bowling Green, Kentucky 42104, (270) 746-7475;~~

~~(d) Florence Regional Office, 8020 Veterans Memorial Drive, Suite 110, Florence, Kentucky 41042, (859) 525-4923;~~

~~(e) Hazard Regional Office, 233 Birch Street, Suite 2, Hazard, Kentucky 41701, (606) 435-6022;~~

~~(f) London Regional Office, 875 S. Main Street, London, Kentucky 40741, (606) 330-2080;~~

~~(g) Owensboro Regional Office, 3032 Alvey Park Drive, W., Suite 700, Owensboro, Kentucky 42303, (270) 687-7304;~~

~~(h) Paducah Regional Office, 130 Eagle Nest Drive, Paducah, Kentucky 42003, (270) 898-8468; and~~

~~(i) Frankfort Regional Office, 643 Teton Trail, Suite B, Frankfort, Kentucky 40601, (502) 564-3358.~~

~~(3) Copies of the Code of Federal Regulations and the Federal Register may be~~

- 1 ~~obtained from the Superintendent of Documents, U.S. Government Printing Office, Attn:~~
- 2 ~~New Orders, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954, phone (202) 512-~~
- 3 ~~1800, fax (202) 512-2250.]~~

9/9/09

Date



Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 28, 2009, at 10:00 a.m. (local time) in Conference Room 201 B on the first floor of the Division for Air Quality at 200 Fair Oaks Lane, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who wishes to be heard shall be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business on November 2, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person listed below.

The hearing facility is accessible to persons with disabilities. Requests for reasonable accommodations, including auxiliary aids and services necessary to participate in the hearing, may be made to the contact person at least five (5) workdays prior to the hearing.

CONTACT PERSON: Laura Lund, Environmental Technologist II, Division for Air Quality, 1st Floor, 200 Fair Oaks Lane, Frankfort, Kentucky 40601, telephone (502) 564-3999, ext. 4428, fax (502) 564-4666, and electronic mail Laura_Lund@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 51:017

Contact person: Laura Lund, Environmental Technologist II

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation provides for the prevention of significant deterioration (PSD) of ambient air quality, and applies to major stationary sources and major modifications constructing in areas designated as either attainment or unclassified.
- (b) The necessity of this administrative regulation:** This administrative regulation is necessary in order to continue to receive full delegation of authority for the federal PSD program in Kentucky.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-100 authorizes the cabinet to promulgate administrative regulations for the prevention, abatement, and control of air pollution. KRS 224.10-100(26) mandates the preservation of clean air resources while ensuring economic growth. This regulation conforms to the statutes because it is no more stringent than the federal mandate.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation is no more stringent than the federal mandate, codified in 40 C.F.R. 51.166.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** This amendment revises the list of exempted major stationary sources codified in 40 C.F.R. Part 51, and the list of major sources codified in 40 C.F.R. Part 70, as they relate to PSD, NSR, and Title V applicability. The amendment removes the existing standards and requirements for clean units (CU) and pollution control projects (PCP) that have been vacated at the federal level in a D.C. Court of Appeals decision. This amendment requires major sources emitting more than 100 tons per year of nitrogen oxides (NOx) to conduct an ambient air quality analysis for ozone.
- (b) The necessity of the amendment to this administrative regulation:** These regulatory revisions are necessary in order to implement changes in the KY State Implementation Plan (SIP) in response to changes in the federal rules and to provide the applicable sources with the appropriate regulatory mechanism to submit an ozone air quality analysis.
- (c) How the amendment conforms to the content of the authorizing statutes:** Kentucky's federally-approved PSD SIP provides the permitting and enforcement authority delegated from the U.S. EPA to the Commonwealth.

- (d) **How the amendment will assist in the effective administration of statutes:** This administrative regulation amendment is modeled after the federal regulations.
- (3) **List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation.** The amendment revises the applicability of major sources by specifically excluding "chemical process plants" that produce ethanol through a natural fermentation process. In addition, sources meeting standards and requirements for CU and PCP, and sources emitting more than 100 tons per year of NOx, are affected by this administrative regulation.
- (4) **Provide an assessment of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:**
- (a) **List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** Regulated entities shall continue to comply with this administrative regulation. This regulation includes an amendment that affects existing or proposed facilities that produce ethanol through a natural fermentation process as it specifically excludes them, under the component term "chemical process plants," from having to comply with the PSD/NSR requirements. Sources will no longer be required to meet standards and requirements for CU and PCP. In addition, major sources emitting more than 100 tons per year of NOx will be required to conduct an ambient air quality analysis for ozone.
- (b) **In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** There are no additional costs involved in compliance with this regulation.
- (c) **As a result of compliance, what benefits will accrue to the entities identified in question (3):** Ethanol facilities, as defined in C.F.R. 51.166 and this administrative regulation, are no longer included under the 100 tons per year PTE limit for major source categories under the PSD/NSR rules. As a result of not having to apply additional emission controls, growth of the ethanol industry will increase.
- (5) **Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**
- (a) **Initially:** The Cabinet will not incur any additional costs for the implementation of this regulation.
- (b) **On a continuing basis:** There will not be any additional continuing costs for the implementation of this regulation.
- (6) **What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:** The Cabinet's current operating budget will be used for the implementation and enforcement of this

regulation.

- (7) **Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment.** No increase in fees or funding is necessary to implement this regulation.
- (8) **State whether or not this administrative regulation established any fees or directly or indirectly increased any fees.** This regulation does not establish, nor does it directly or indirectly increase any fees.
- (9) **TIERING: Is tiering applied?** Yes. The applicability and compliance requirements that are tiered in this administrative regulation are modeled after the federal PSD and NSR rules.

FEDERAL MANDATE ANALYSIS COMPARISON

1. **Federal statute or regulation constituting the federal mandate.** 42 U.S.C. 7401-7671q provides the statutory mandate codified in 40 C.F.R. Part 51.166, as amended in 72 Fed. Reg. 24077, May 1, 2007, and in 72 Fed. Reg. 32528, June 13, 2007.
2. **State compliance standards.** The state compliance standards are found in KRS 224.10-100(5).
3. **Minimum or uniform standards contained in the federal mandate.** The federal PSD mandate requires sources described in Section 1 of this administrative regulation to demonstrate that any construction or modification will not cause emissions to increase by specific incremental amounts; that the source's emissions will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS); and that the source will use best available control technology (BACT) to control emissions.

The amendment to this administrative regulation excludes "chemical process plants" that produce ethanol by a natural fermentation process in the revised definition of major stationary source. Further revisions include the removal of clean unit (CU) and pollution control project (PCP) requirements because they have been vacated at the federal level by a decision from the D.C. Court of Appeals. This amendment requires major sources emitting more than 100 tons per year of nitrogen oxides (NOx) to conduct an ambient air quality analysis for ozone.

4. **Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?** No. This regulation is modeled after the federal regulations.
5. **Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.** Stricter standards and requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation #: 401 KAR 51:017

Contact person: Laura Lund, Environmental Technologist II

1. **Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?** Yes.
2. **What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?** The Division for Air Quality will continue to implement and enforce the Prevention of Significant Deterioration (PSD) program in the Commonwealth.
3. **Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.** KRS 224.10-100(5), 42 U.S.C. 7401-7671q.
4. **Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**
 - (a) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?** This regulation generates no revenues.
 - (b) **How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?** This regulation generates no revenues.
 - (c) **How much will it cost to administer this program for the first year?** The Cabinet's existing operating budget continues as the source of funding for the implementation of this program.
 - (d) **How much will it cost to administer this program for subsequent years?** There will be no additional costs for administering the program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): There is no known effect on current revenues.

Expenditures (+/-): There is no known effect on current expenditures.

Other Explanation: There is no further explanation.